The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL:	CS/SB 2470
INTRODUCER:	Regulated Industries Committee and Senator Deutch
SUBJECT:	Condominium Associations
DATE:	April 10, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Emrich	Deffenbaugh	BI	**Favorable**
3.			CA	
4.			JU	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill revises the insurance rights and obligations of condominium associations and the unit owners to obtain and maintain insurance policies, including hazard insurance. The bill provides that adequate hazard insurance is based upon the replacement cost of the property and requires that the full insurable value must be determined at least every 36 months. The bill maintains the current provision that permits three or more communities to obtain insurance for an amount equal to the probable maximum loss (PML) for a 250-year windstorm event, but requires that the Office of Insurance Regulation review and approve rates and policy forms, that unit owners obtain accurate disclosures and that hurricane loss models are accurate and appropriately applied to the insured condominium structures.

The bill provides the procedures for a board meeting to establish the amount of deductibles. The bill requires that the meeting must be open to all members. The bill specifies the property that must be excluded from the association's insurance coverage, and specifies the provisions that must be contained in every hazard insurance policy issued or renewed on or after January 1, 2009 to an individual unit owner.

The bill requires that improvements or additions which do not benefit all of the unit owners must be insured by the unit owner or owners who use the improvement or addition. It also requires the unit owners must provide to the condominium association evidence of a currently effective hazard and liability insurance policy no more than once per year. If the unit owner fails to provide the evidence of insurance within 30 days, the association may purchase an insurance policy on behalf of the unit owner, which the unit owner must pay for. The bill specifies the obligations of the condominium association and the unit owner for the costs of reconstruction and repair work. The bill provides that any expenses required by government, including fire safety equipment and water and sewer service, are common expenses.

The bill provides emergency powers for condominium associations during a declared state of emergency.

The bill provides an effective date of July 1, 2008.

This bill substantially amends sections 718.111 and 718.113, Florida Statutes. This bill creates Section 718.1265, Florida Statutes.

II. Present Situation:

Condominium 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 ("department"), in accordance with ch. 718, F.S.

Pooling of Condominium Associations to Secure Windstorm Insurance

In 2007, the Legislature enacted a provision which specified what constituted "adequate windstorm insurance" under the condominium law for a group of 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.).[2] The law provided that these entities could pool their resources to obtain and maintain windstorm insurance coverage if such coverage was sufficient to cover an 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.[3]

[1] Section 718.103(11), F.S.

[2] Chapter 2007-1, L.O.F. (HB 1A was passed during Special Session A and amended s. 718.111(11)(a)1., F.S.).

[3] Established in 1995, the Florida Commission (Commission) on Hurricane Loss Projection Methodology's role is to adopt findings relating to the accuracy or reliability of the methods, standards, models and other means used to project hurricane losses. Its members include experts in insurance, finance, statistics, computer system design, and meteorology. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission standards. The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant only if OIR and the consumer advocate appointed by DFS have access to

The law did not amend or change any requirements for regulation of insurance policies by the Office of Insurance Regulation (OIR). Currently, property insurance policies sold by authorized insurers (i.e., insurers that have a certificate of authority issued by the OIR) are subject to approval of rates and policy forms. However, policies issued by surplus lines insurers are not subject to approval of rates and forms. Surplus lines insurers must be approved by OIR as "eligible" by meeting certain financial requirements. In general, an insurance agent cannot place business with a surplus lines insurer without documenting that coverage is unavailable from an authorized insurer.[4]

As a result of the 2007 legislation, some surplus lines insurers have written condominium association insurance policies with policy limits below the total value of the association properties. Representatives with Willis Group, an insurance broker, state that as of April 2008, their surplus lines companies have written one group insurance policy for approximately eighty condominium associations in the Tampa-St. Petersburg area. The coverage limits are approximately $100 million, which is about 10 percent of the total value of the association properties of approximately $1 billion, but the $100 million amount is equal to the PML for a 250-year windstorm event, according to these representatives. Willis uses the RMS (Risk Management Solutions) hurricane model which has been approved by the Florida Commission on Hurricane Loss Projection Methodology.

Officials with the OIR have expressed concern with condominium association windstorm insurance policies that do not provide coverage for the total value of the association property. The OIR has concerns that these policies do not provide sufficient, clear disclosures to the unit owners as to the terms and conditions of coverage, including any limits of coverage below the total value of the association property, or the risk assumed by the unit owners should their coverage be inadequate. If coverage is inadequate, unit owners would be charged with assessments after a hurricane occurs. Currently, policy forms are often distributed to unit owners only after an association board approves the insurance policy, according to these officials.

Condominium Unit Owner Responsibilities-Plaza East Decision

In January 2006, the division issued a Declaratory Statement in the petition filed by *Plaza East Condominium Association (Plaza East)*.[5] The Petition requested an opinion as to whether *Plaza East* may pass on to the unit owner the cost of repairing those items that would have otherwise been paid for by the association's insurance policy, but for the application of the deductible or amounts in excess of the coverage limits, notwithstanding provisions in the declaration defining the condominium property as part of a unit with the cost of repairs to be paid for by the unit owner. *Plaza East* acknowledged it is required to insure the condominium property located outside the units, the property inside the units as initially installed, and all portions of the condominium property requiring coverage by the association under s. 718.111(11), F.S.

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all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding. The Commission has approved five models.

[4] Surplus lines insurers are not required to have their rates or forms approved by the OIR under ss 626.913-626.937, F.S.

[5] *In Re: Petition for Declaratory Statement Plaza East Association, Inc.*, Division of Florida Land Sales, Condominiums and Mobile Homes Declaratory Statement 2005-055, Docket No. 2005 059934, Department Final Order No. DBPR-2006-00239, January 13, 2006. ("*Plaza East*").

The division concluded that although the declaration of condominium required that the unit owner was responsible to pay for repairs if the damage was to the portions of the unit that the unit owner was required to maintain, in *Plaza East*, the division decided that the condominium association could not shift the cost of the deductible, a common expense, to only those unit owners whose property was damaged by the insurable event such as a hurricane. The division stated that the owners of the damaged units had paid their proportionate share of the insurance to replace the damaged property, and that it was unfair to shift the risk and liability to the individual unit owners for the damages. It is also noted that holding individual unit owners liable is inconsistent with the assignment of insurable risk in s. 718.111(11), F.S.

According to representatives with condominium associations, the *Plaza East* decision was contrary to how the law had been interpreted previously and has created confusion among condominium associations and unit owners. Historically, condominium declarations have unilaterally allocated the risk of uninsured losses to the unit owner in control of the damaged property and not the association. Legislation is needed, argue these representatives, to clarify what are or are not considered to be common expenses payable by all condominium unit owners in the event of reconstruction following a casualty.

OIR Report on Condominium Insurance

Legislation enacted in 2003 amended s. 718.111(11), F.S., to require the OIR to prepare for publication 18 months from the effective date of the act a report evaluating premium increases or decreases for associations, unit owner premium increases or decreases, recommended changes to better define common areas, or any other information the OIR deems appropriate.[6] In November 2004, the OIR published its report which concluded that premiums had increased over the past few years at a "moderate rate."[7] The report also found that the insuring responsibilities for condominium property are generally clear and recommended that the 2003 legislative changes to the condominium insurance provision be allowed to fully impact the marketplace. Finally, OIR recommended that enhanced consumer outreach programs be instituted to facilitate continued insurer entrance into the admitted market and improved education of the insurance buying public.

Other Insurance Provisions

Section 718.111(11)(a), F.S., provides that it is a breach of fiduciary responsibility by the association's developer-appointed board of directors to fail to obtain and maintain adequate insurance during any period of developer control, unless the board members can show that despite such failure, they have exercised due diligence.

Section 718.111(11)(a), F.S., also provides that the declaration of condominium may require that condominium property consisting of freestanding buildings where there is no more than one building in or on such unit need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property. This provision relates to what is known as "land condominiums." A "land condominium" is composed of separate parcels of land. The units are the separate parcels. Each unit may have one or more buildings in or on each parcel.

[6] Chapter 2003-14, L.O.F. (SB 592)
[7] Florida Office of Insurance Regulation, *Condominium Insurance Report*, November 19, 2004.

Section 718.111(11)(a), F.S., also authorizes condominium associations to obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units.

Section 718.111(11)(a), F.S., provides that "adequate insurance" may include reasonable deductibles as determined by the board based upon available funds or predetermined assessment authority at the time that the insurance is obtained. Associations may have a reasonable deductible even if the declaration of condominium requires coverage by the association for "full insurable value," "replacement cost," or the like. Section 718.111(11)(a), F.S., also permits condominium boards to consider available funds or predetermined assessment authority when determining whether they have the statutorily required "adequate insurance."

Section 718.111(11)(a)2., F.S., permits an association or group of associations to self-insure against claims against the association, the association property, and the condominium property required to be insured by an association. To provide self-insurance the association or associations must comply with the applicable self-insurance provisions of ss. 624.460-624.488, F.S. It also provides that such self-insurance is considered adequate insurance. A copy of each policy of insurance in effect must be made available for inspection by unit owners at reasonable times.

Section 718.111(11)(b), F.S., provides that every hazard insurance policy issued or renewed on or after January 1, 2004, to protect the condominium shall provide primary coverage for:

1. All portions of the condominium property located outside the units;
2. The condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and
3. All portions of the condominium property for which the declaration of condominium requires coverage by the association.

Section 718.111(11)(b), F.S., provides that:

> Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries.

Section 718.111(11)(b), F.S., further clarifies that this exclusion is intended to establish the property or casualty insuring responsibilities of the association and those of the individual unit

owner and do not serve to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual unit owner.

Section 718.111(11)(b), F.S., provides that, beginning January 1, 2004, condominium associations are authorized to amend the declaration of condominium, without regard to any requirement for mortgagee approval of amendments affecting insurance requirements, to conform the declaration of condominium to the coverage requirements of this section.

Regarding the individual unit owners hazard insurance responsibilities, s. 718.111(11)(c), F.S., provides that:

> Every hazard insurance policy issued or renewed on or after January 1, 2004, to an individual unit owner must provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the condominium association that operates the condominium in which such unit owner's unit is located. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage to be provided by the association as set forth in paragraph (b) shall be insured by the individual unit owner.

Section 718.111(11)(d), F.S., requires that the association obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. It provides that insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. It defines the term “persons who control or disburse funds of the association” to include, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the association. The association is required to bear the cost of bonding.

Common Expenses

Section 718.115(1)(a), F.S., provides, in pertinent part that the common expenses of a condominium association include:

> The expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as common expense by this chapter, the declaration, the documents creating the association, 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.

Section 718.115(1)(a), F.S., also provides that these common expenses must either have been services or items provided on or after the date control of the association is transferred from the

developer to the unit owners or must be services or items provided for in the condominium documents or bylaws.

Improvements to Common Elements and Association Property
Section 718.113(2)(a), F.S., prohibits any material alteration or substantial additions to the common elements or real property of the association, except as provided in the declaration as originally recorded or as amended under the procedures provided in the declaration. If the declaration does not specify the procedures, then 75 percent of the total voting interests[8] must approve the alterations or additions.

III. Effect of Proposed Changes:

Insurance
The bill amends s. 718.111(11), F.S., to revise and clarify the insurance requirements for condominiums. The bill eliminates a requirement mandated in 2003 that the OIR report and prepare for publication 18 months from the effective date of s. 718.111(11), F.S., an evaluation of the premium increases and decreases for condominium associations and unit owners, including the OIR's recommendations.

Section 718.111(11)(a), F.S., maintains the current requirement for adequate insurance but uses the term "adequate hazard insurance" to specify the type of insurance that is required. It also provides that adequate hazard insurance shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The bill provides that adequate hazard insurance is based upon the replacement cost of the property regardless of "full insurable value," "replacement cost," or similar language in the declaration of condominium. The bill requires that the full insurable value must be determined at least every 36 months.

Section 718.111(11)(a)1., F.S., permits condominium associations to provide adequate hazard insurance through a self-insurance fund that complies with ss. 624.460-624.488, F.S. The bill deletes the provision that permits condominium association to self-insure against claims against the association, the association property, and the condominium property required to be insured by an association. The bill also deletes the requirement that the association must make a copy of the policy available for inspection by the unit owners at reasonable times.

Section 718.111(11)(a)2., F.S., maintains the current provision that permits three or more communities to obtain insurance for an amount equal to the PML for 250-year windstorm event as determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology.[9] The bill requires that any policy providing such insurance coverage issued after July 1, 2008, must be reviewed and approved by

[8] Section 718.103(10), F.S., defines voting interests to mean "the voting rights distributed to the association members pursuant to s. 718.104(4)(j), F.S. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium."
[9] *See* s. 718.111(11)(a)1., F.S., (2007).

the OIR before it can be deemed adequate. The bill specifies that the OIR's review and approval must include the following:

- Approval of the policy and related forms pursuant to ss. 627.410 and 627.411,
- Approval of the rates pursuant to s. 627.062,
- A determination that the loss model approved by the Commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss, and
- A determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners prior to execution of the agreement by a condominium association.

The requirement for approval of forms and rates is required under current law if the policy is sold by an authorized (Florida licensed) insurer, but this would be a new regulatory requirement for a surplus lines insurer selling this product. The additional requirements of a determination by OIR that the loss model was accurately and appropriately applied and that a complete and accurate disclosure has been provided to unit owners, are new requirements, whether sold by an authorized insurer or a surplus lines insurer.

Section 718.111(11)(a)3., F.S., maintains the current provision that permits condominium associations to consider deductibles when determining the adequate amount of hazard insurance coverage.[10] However, the bill deletes the provision that the policy may include a deductible regardless of any requirement in the declaration of condominium for coverage by the association for "full insurable value," "replacement cost," or the like.

Section 718.111(11)(b), F.S., changes the current requirement for developer-controlled associations to exercise due diligence to obtain and maintain insurance.[11] The bill requires that the developer-controlled association must exercise its "best efforts" to obtain and maintain insurance. Failure to obtain and maintain adequate hazard insurance during any period of developer control would constitute a breach of the fiduciary responsibility of the developer-appointed board members, unless the members can show that they made the best efforts to acquired coverage even if they failed.

Section 718.111(11)(c), F.S., maintains the current requirement that policies may include deductibles as determined by the board.[12] The bill requires that insurance deductibles must be consistent with industry standards and the prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated. It permits the association board to determine the deductible on the basis of available funds, including reserve amounts, or predetermined assessment authority at the time the insurance is obtained, when determining adequate insurance.

Section 718.111(11)(c)3., F.S., provides the procedures for board meeting for establishing the amount of deductibles based upon the level of available funds and predetermined assessment

[10] *See* s. 718.111(11)(a), F.S., (2007).
[11] *Id.*
[12] *Id.*

authority at a meeting of the board. The bill requires that the meeting must be open to all members. The bill requires that the meeting notice must:

- State the proposed deductible and the available funds;
- State the assessment authority relied upon by the board; and
- Estimate any potential assessment amount against each unit, if any.

The bill permits the meeting to be held in conjunction with a meeting to consider the proposed budget or budget amendment.

Section 718.111(11)(d), F.S., maintains the current requirement for unit-owner controlled associations to exercise their best efforts to obtain and maintain insurance required by this subsection.[13]

Section 718.111(11)(e), F.S., maintains the current provision that permits associations for land condominiums to not obtain insurance if the unit owners are required to obtain adequate insurance.[14] Section 718.111(11)(e), F.S., also maintains the current provision that permits the association to obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units.[15]

Section 718.111(11)(f), F.S., specifies the following primary coverage that every hazard insurance policy issued on or after January 1, 2009 must provide:

- All original or replaced portions of the condominium property; and
- All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2), F.S.[16]

The bill deletes the requirement that primary coverage must be for all portions of the condominium property located outside the units. The bill deletes the current requirement in s. 718.111(11)(b)2., F.S., for primary coverage for condominium property inside the units. The bill also deletes the current requirement in s. 718.111(11)(b)3., F.S., for primary coverage for all portions of the condominium property for which the declaration of condominium requires coverage by the association.

Section 718.111(11)(f)3., F.S., specifies the property that must be excluded from the association's insurance coverage. The bill maintains most of the exclusions in current law and also requires that all personal property within the unit or limited common elements must be excluded from the coverage. The bill deletes the exclusion in current law for air conditioner or heating units. The bill deletes the provision that excludes all of the specified properties that are located within the boundaries of a unit and serve only one unit. It also deletes the exclusion for

[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Section 718.113(2), F.S., provides for the alteration or substantial additions to the common elements or to real property which is association property.

all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries.

Section 718.111(11)(g), F.S., specifies the provisions that must be contained in every hazard insurance policy issued or renewed on or after January 1, 2009 to an individual unit owner. The bill requires that an individual unit owner must include special assessment coverage of not less than $2,000 per occurrence. An insurance policy issued to an individual unit owner providing coverage does not provide rights of subrogation against the condominium association.

Section 718.111(11)(g)1., F.S., requires that improvements or additions which do not benefit all of the unit owners must be insured by the unit owner or owners who use the improvement or addition. Alternatively, the bill permits the association to insure the improvements or additions at the expense of the unit owners who use them.

Section 718.111(11)(g)2., F.S., requires the unit owners to provide evidence of a currently effective hazard and liability insurance policy upon request by the association. The association may not require evidence of insurance more than once per year. If the unit owner fails to provide the evidence of insurance within 30 days, the association may purchase an insurance policy on behalf of the unit owner. The unit owner is responsible for the cost of the policy and for any reconstruction costs incurred by the association. These costs may be collected as assessments under s. 718.116, F.S.[17]

Section 718.111(11)(g)3., F.S., provides that the association shall undertake all reconstruction work after a casualty loss. The unit owner may only undertake reconstruction work if he or she has the written consent of the board of administration, and the board must approve the repair methods, qualifications of the contractor, or the contract for repair. The bill requires that the unit owner obtain all required governmental permits and approvals before beginning any reconstruction.

Section 718.111(11)(g)4., F.S., provides that unit owners are responsible for reconstruction costs of any part of property for which they must have casualty insurance. The association may charge the unit owner with an enforceable assessment under s. 718.116, F.S., for any work the association has undertaken. The bill requires that the association must be an additional named insured and loss payee on all casualty insurance policies of unit owners.

Section 718.111(11)(g)5., F.S., provides that multicondominium associations may elect to operate as one condominium by majority vote for insurance purposes including, but not limited to, hazard insurance and the apportionment of deductibles and damages that exceed coverage. The election to do this must be treated as an amendment to the declaration of all the condominiums involved and recorded according to s. 718.110, F.S.[18] Furthermore, the cost of insurance must be placed in the association budget.

[17] Section 718.116, F.S , authorizes condominium associations to place a lien on the condominium unit for failure to pay the assessment. It also provides for interest, if the declaration or bylaws so provide, to accrue at the rate of 18 percent per year, and for late fees not to exceed the greater of $25 or 5 percent.

[18] Section 718.110, F.S., provides that if the declaration does not provide for the process of amending, then it can be amended if approved by more than four-fifths of the voting interests.

Section 718.111(11)(h), F.S., maintains the current requirement for insurance or fidelity bonding of all persons who control or disburse funds of the association.[19]

Section 718.111(11)(i), F.S., maintains the current provision that permits the association to amend the declaration of the condominium without regard to any requirement for mortgagee approval of amendments affecting insurance requirements.[20]

Section 718.111(11)(j)2., F.S., provides that any portion of condominium property, which is required to be insured for casualty loss by the association, that is damaged by casualty must be reconstructed, repaired or replaced as necessary by the association as a common expense. Hazard insurance, deductibles, uninsured losses, and other damages in excess of hazard insurance coverage are also common expenses. However, the bill provides the following exceptions:

- A unit owner is responsible for the cost of repair or replacement of condominium property which is not paid by insurance when damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or association rules by a unit owner, his or her family, tenants, guests or invitees. The unit owner is also without subrogation rights.
- The unit owner is also financially responsible for the cost of repair or replacement of personal property of another unit owner or the association when the damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or association rules.
- If the unit owner is reimbursed by insurance proceeds that go to the association, then the association must reimburse the unit owner without a waiver of any subrogation rights.
- The association is not obligated to pay for reconstruction or repayment of casualty losses when losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim had been settled or denied by the insurance company because it was untimely filed.

Section 718.111(11)(k), F.S., permits associations to opt out of the provisions for allocation of repair or reconstruction expenses in s. 718.111(j), F.S., if the majority of the total voting interests[21] in the association approve. The association may instead allocate repairs or reconstruction costs in the manner provided in the declaration as originally recorded or as amended. The vote may be approved by voting interests of the association without regard to any mortgagee consent requirements.

Section 718.111(11)(l), F.S., permits any condominium in a multicondominium association that has not consolidated its financial operations under s. 718.111(6), F.S.,[22] to opt out of the

[19] *See* s.718.111(11)(d), F.S., (2007).
[20] See s.718.111(11)(b), F.S., (2007).
[21] Section 718.103(10), F.S., defines voting interests to mean "the voting rights distributed to the association members pursuant to s. 718.104(4)(j), F.S. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium."
[22] Section 718.111(6), F.S., permits two or more residential condominiums in which the initial condominium declaration was recorded prior to January 1, 1977, to operate as a single condominium for purposes of financial matters, including budgets,

provisions in s. 718.111(11)(j), F.S., with the approval of the majority of total voting interests in that condominium. Such a vote may be approved by the voting interests without regard to any mortgagee consent requirements.[23]

Section 718.111(11)(m), F.S., requires that any association or condominium voting to opt out of the provision in s. 718.111(11)(j), F.S., to record the notice with the date of the opt-out vote and the official records book and page where the declaration is recorded. The opt-out is effective on the date of recording of notice in public records of the association. An association that has opted out may reverse that decision by the same majority vote required for the opt-out and record the notice in the official records.

Section 718.111(11)(n), F.S., provides that an association is not obligated to pay for reconstruction or repair costs due to casualty loss for any improvements installed by a current or former unit owner or developer as part of the original construction that only benefits the unit for which it was installed and is not a part of the standard improvements installed by the developer on all the units as part of the original construction. If there is insurance for a specific improvement, the bill further provides that any party is not relieved of its obligations regarding recovery.

Section 718.111(11)(o), F.S., provides that the insurance provisions of this subsection do not apply to timeshare condominium associations. It further provides that timeshare condominium associations must maintain insurance as provided in s. 721.165, F.S.

Improvements to Common Elements and Association Property
The bill amends s. 718.113(2)(a), F.S., to specify that this paragraph is intended to clarify existing law and applies to associations which exist on the effective date of the bill.[24]

Condominium Association Emergency Powers
The bill creates s. 718.1265, F.S., to provide emergency powers for condominium associations during a declared state of emergency. It provides that the board of administration of the association may exercise the following powers, to the extent allowed by law and if not expressly prohibited by the association governing documents, when there is an event that is declared a state of emergency pursuant to s. 252.36, F.S.:[25]

- Conduct board meetings and membership meetings with notice as is practical.
- Cancel and reschedule association meetings.
- Name any person who is not a director as an assistant officer. Assistant officers have the same authority as executive officers whom they are assisting during the state of emergency.
- Relocate association's principal office or designate an alternative office.

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assessments, accounting, recordkeeping, and similar matters. Each condominium must provide for the consolidated operation in their declarations or bylaws. The condominium may also opt to consolidate their financial operations.

[23] Mortgagee consent is generally provided for in s. 718.110(11), F.S.

[24] Section 718.113(2)(b) and (c), FS, relating to material alterations of, or substantial additions to, the common elements and the association's real property, respectively, also currently provide that these provisions are intended to clarify existing law.

[25] Section 252.36, F.S., provides emergency management powers to the Governor. Section 252.36(2), F.S., authorizes the Governor to declare a state of emergency by executive order or proclamation if she or he finds an emergency has occurred or is imminent.

- Enter into agreements with counties and municipalities to assist with debris removal.

The bill requires that the condominium association implement a disaster plan before or immediately after the event that is declared a state of emergency. The plan can include, but not limited to shutting down or off elevators, electricity, water, sewer, security systems, or air conditioners.

The board of administration may also exercise the following powers:

- Declaring any portion of the condominium property unavailable for entry or occupancy to protect the health, safety, and welfare of persons on the property.
- Requiring evacuation of condominium property when there is a mandatory evacuation. If any unit owner fails or refuses to evacuate, then the association is immune from liability for injury.
- Determining whether the condominium can be safely inhabited.
- Mitigating damage by making repairs.
- Contracting on behalf of unit owners or owner for services which the unit owner would be individually responsible for, but is necessary to prevent further damage to condominium property. Unit owners are responsible for re-imbursement to the association.

The bill also authorizes the levy of special assessments without owner votes regardless of declaration, articles or bylaws. It can also borrow money and pledge association assets as collateral to fund emergency repairs without unit owner approval.

This bill provides that the special powers authorized by the bill are limited to the reasonable time necessary to protect the health, safety, and welfare of the association, and unit owners, and other persons. The powers are also limited to the time reasonably necessary to mitigate further damage and make emergency repairs.

Effective Date
The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The clarification and revision of the insurance provisions in the bill will aid condominium associations, unit owners and insurers. Unit owners will benefit by obtaining complete and accurate disclosures of condominium insurance policies prior to the execution of the agreement by the condominium association. Surplus lines insurers selling coverage to three or more condominiums with limits equal to the 250-year PML (rather than total replacement value) would be subject to the costs of obtaining approval from the OIR for rates and policy forms.

C. Government Sector Impact:

The OIR will have the responsibility to review and approve rates and policy forms, determine that the loss model is accurately and appropriately applied and that complete disclosure is provided to unit owners of condominium associations that pool their resources to obtain and maintain hazard insurance coverage.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The insurance provisions in section 1 of the bill, which amends s. 718.111(11), F.S., are identical to section 1 of CS/SB 2086 and 2498 by Senators Jones and Bennett which was reported favorably, with two amendments, by the Banking and Insurance Committee on April 8, 2008. Amendment barcode 837736 by Banking and Insurance removed the authority for the Office of Insurance Regulation (OIR) to review and approve rates (relevant only to surplus lines insurers) for a policy for a group of three or more condominium associations, and requires OIR to approve or disapprove the insurance program within 90 days, except for approval of policy and related forms which are subject to the procedures under s. 627.410, F.S.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 25, 2008:
The CS amends s. 718.111(11), F.S., to reword and conform the provision to Section 1 of CS/SB 2086 by the Regulated Industries Committee and Senator Jones. The provision in the bill and the reworded provision in the CS are substantively similar, except for the

following two provisions that are deleted by the CS, and two provisions that are added. The CS deletes the following provisions from the bill:

- Section 718.111(11)(b)4., F.S., provides that the provisions of ss. 718.111(11)(b)1.-3., F.S., which relate the unit owner's insurance responsibilities, are intended to establish the property and casualty insuring responsibilities of the association and the individual unit owners. It also notes that these provisions are not intended to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual unit owners.
- Section 718.111(11)(c)2.a.(III), F.S., of the bill requires that the notice that condominium associations must give to unit owners to reverse a decision to opt out of the provisions of the bill relating to the allocation of repair and reconstruction expenses must be recorded with the formality of a deed, and the record of the vote must be kept as amended by ch. 2004-301, L.O.F., long as the opt out is in effect.

The CS amends s. 718.111(11)(a)2., F.S., regarding permitting three or more communities to obtain insurance for an amount equal to the PML for 250-year windstorm event, to specify the matters that must be reviewed and approved by the Office of Insurance Regulation.

The CS amends s. 718.111(11)(o), F.S., to provide that the insurance provisions of this subsection do not apply to timeshare condominium associations, and that timeshare condominium associations must maintain insurance as provided in s. 721.165, F.S.

B. Amendments:

None.