

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 744

INTRODUCER: Regulated Industries Committee and Senator Passidomo

SUBJECT: Community Associations

DATE: April 18, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

SB 744 revises requirements for the governance and operation of condominium, cooperative, and homeowners' associations, with the most significant changes pertaining to fire safety systems in condominium and cooperative buildings, the Distressed Condominium Relief Act, and financial reporting in all three types of associations.

Regarding all three types of associations, the bill no longer automatically permits an association of a community having fewer than 50 units or parcels to prepare an annual report of cash receipts and expenditures instead of a more thorough type of financial statement. However, the option remains for the associations to vote to do so.

Regarding condominium and cooperative associations, the bill no longer requires an association having a building 75 feet or less in height to vote to forego retrofitting the buildings with fire safety systems, such as fire sprinklers. These buildings are exempt from retrofitting requirements. Also, the bill clarifies that if an association, whether by vote or by statute, is permitted to forego retrofitting its building with a fire sprinkler system, it is also permitted to forego retrofitting with an engineered lifesafety system.

Regarding homeowners' and cooperative associations, the bill specifies that the board members of each type of association may communicate by email, but not vote by e-mail. And condominium law already includes a similar provision.

Regarding cooperative associations, the bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. Also, in associations having more than 10 units, the bill prohibits co-owners of a unit from serving simultaneously on the association's board.

Regarding condominiums, the bill removes the date restriction in the Distressed Condominium Relief Act that limits the favorable classifications of "bulk buyer" and "bulk assignee" to persons who purchase 8 or more condominiums between July 1, 2010, and July 1, 2018.

Regarding homeowners' associations, the bill requires the board to call a special meeting if:

- The board adopts an annual budget that requires an assessment that exceeds 115 percent of assessment for the preceding fiscal year; and
- Ten percent of the voting interests submit a written request for the meeting within 21 days after the budget was adopted.

## II. Present Situation:

### Condominiums, Cooperatives, and Homeowners' Associations in General

#### *Condominiums*

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, [as part of the ownership of] each unit, an undivided share in common [portion of the condominium property]." <sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located. <sup>2</sup> In addition to creating the condominium, the declaration must include the condominium's bylaws, and the declaration functions as the condominium's "constitution," subject to applicable laws. <sup>3</sup> Subject to the declaration, a condominium is administered by a board of directors referred to as a "board of administration." <sup>4</sup>

#### *Cooperatives*

A cooperative is similar to a condominium in many ways. However, a key distinction between the two is the sense in which a person may "own" a unit in a condominium or a cooperative. In a cooperative, a "unit owner" owns a share in the cooperative association, and he or she leases, instead of owns, a unit. <sup>5</sup> And the cooperative association is the corporation or other legal entity that owns the record interest or leasehold of the cooperative's property. <sup>6</sup> Additionally, the cooperative association may assess costs for the maintenance of common elements. <sup>7</sup>

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

<sup>3</sup> *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>4</sup> Section 718.103(4), F.S.

<sup>5</sup> See s. 719.103(26), F.S.

<sup>6</sup> Section 719.103(12), F.S.

<sup>7</sup> See ss. 719.106(1)(g) and 719.107, F.S.

### ***Homeowners' Associations***

Another legal relationship that may exist between the members of a community is membership in a homeowners' association. A homeowner's association, unlike a condominium association or cooperative, generally exists in a subdivision of single-family homes or in a mobile home community. However, a key legal distinction between homeowners' associations and the other arrangements is that members of a homeowners' association do not necessarily own a share in the common areas of the community, though they will often have to pay to maintain these areas. Indeed, the Florida Statutes authorize homeowners' associations to impose assessments that, if unpaid, may become a lien on the homeowner's property.<sup>8</sup>

Homeowners' associations are administered by an elected board of directors.<sup>9</sup> The officers and directors of a homeowners' association have a fiduciary relationship to the members who are served by the association.<sup>10</sup> The powers and duties of homeowners' associations include the powers and duties provided in statute<sup>11</sup> and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.<sup>12</sup>

### **Statutes Governing Condominiums, Cooperatives, and Homeowner's Associations**

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, regulate these associations, along with each association's governing documents. For example, these chapters describe requirements for notices of meetings,<sup>13</sup> recordkeeping requirements, requirements to make certain records of an association accessible to its members,<sup>14</sup> and financial reporting requirements.<sup>15</sup> Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

### ***Official Records***

The Florida Statutes specify those official records that must be maintained by these condominium, cooperative, and homeowners' associations.<sup>16</sup> As a general matter, these records must be maintained in this state for at least 7 years.<sup>17</sup> Certain of these records must be accessible to the members of an association.

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<sup>8</sup> Section 720.301(9), F.S.

<sup>9</sup> See ss. 720.303 and 720.307, F.S.

<sup>10</sup> Section 720.303(1), F.S.

<sup>11</sup> Chapter 720, Florida Statutes.

<sup>12</sup> See ss. 720.301 and 720.303, F.S.

<sup>13</sup> See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

<sup>14</sup> See s. 718.111(12), F.S., relating to condominiums, s. 719.104(2), F.S., relating to cooperatives, and s. 720.303(4), F.S., relating to homeowners' associations.

<sup>15</sup> See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

<sup>16</sup> See s. 718.111(12), F.S., relating to condominium associations, s. 719.104(2), F.S., relating to cooperative associations, and s. 720.303(5), F.S., relating to homeowners' associations.

<sup>17</sup> See s. 718.111(13)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.

One type of record—bids and contracts—must be maintained for 1 year by cooperative and homeowners’ associations<sup>18</sup> but for 7 years by condominium associations.<sup>19</sup>

Condominium and cooperative associations, but not homeowners’ associations, must maintain as an official record the ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners. And these records must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates.<sup>20</sup> However, homeowners’ associations are not required to maintain these records.<sup>21</sup>

### ***Financial Reporting***

These associations must also prepare and produce annual financial reports for the preceding fiscal year.<sup>22</sup>

The type of financial reporting that an association must perform differs based on the association’s total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- At least \$150,000 but less than \$300,000 must prepare *compiled* financial statements.<sup>23</sup>
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.<sup>24</sup>
- \$500,000 or more must prepare *audited* financial statements.<sup>25</sup>

An association having fewer than 50 units or parcels, regardless of the association’s annual revenues, must prepare a report of cash receipts and expenditures.<sup>26</sup>

Also, the type of report or statement required may often be adjusted to a more or less stringent type if approved by vote of the association.<sup>27</sup>

<sup>18</sup> See ss. 719.104(2)(a)9.d., and 720.303(4)(i), F.S.

<sup>19</sup> Section 718.111(12)(a)11.d., F.S.

<sup>20</sup> Sections 718.111(12)(a)12., and 719.104(2)(a)10., F.S.

<sup>21</sup> See s. 720.303(4), F.S.

<sup>22</sup> See ss. 718.111(13), 719.104(4), and 720.303(7), F.S. However, both the condominium and the cooperative statute include the following language, “An association may not waive the financial reporting requirements of this section for more than 3 consecutive years.” This strongly implies that these associations may waive the reporting requirement for up to three years, though the statute nowhere says this.

<sup>23</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant’s (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron’s Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron’s 2000).

<sup>24</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>25</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

<sup>26</sup> Sections 718.111(13)(b)2., 719.104(4)(c)2., and 720.303(7)(b)2., F.S.

<sup>27</sup> See, e.g., 720.303(7)(c)-(d), F.S.

### ***Notice of Board Meetings***

Condominium and cooperative associations must post notice of all board meetings in a conspicuous place on the property for at least the 48 hours prior to the meeting, except in emergencies. However, 14 days' notice is required for a meeting at which a nonemergency special assessment or an amendment to any rule regarding unit use will be considered.<sup>28</sup> This notice apparently does not need to state that a special assessment or rule change regarding unit use will be considered at the meeting.

Similarly, homeowners' associations must post notice of a board meeting in a conspicuous place in the community for the 48 hours prior to the meeting, except in emergencies. Alternatively, if notice is not posted in a conspicuous place, then it must be mailed or delivered to each member 7 days prior to the meeting, except in emergencies. Notice of a meeting at which assessments might be levied must include a statement to that effect.<sup>29</sup> Moreover, for any meeting at which a special assessment or a change to a rule regarding parcel use will be considered, notice must be provided at least 14 days prior to the meeting.<sup>30</sup>

### **Fire Prevention in Condominium and Cooperative Buildings**

Retrofitting a condominium or cooperative building with a fire sprinkler system is not required if an association votes to forego it, even if other provisions of law or rules<sup>31</sup> may otherwise require retrofitting condominium or cooperative buildings with fire sprinkler systems or an engineered lifesafety system (ELSS).<sup>32</sup>

If an association has previously voted to forego this retrofitting, the matter may be brought up for a vote to undo the prior decision as often as once every 3 years.

A condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and had not voted to forego these requirements had until December 31, 2016, to apply for a building permit. This application was required to demonstrate that the association would become compliant by December 31, 2019.<sup>33</sup>

Condominiums and cooperatives that complete retrofitting must receive a certificate of compliance from a licensed electrical contractor or electrician as evidence of compliance with the applicable fire and life safety code.<sup>34</sup>

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<sup>28</sup> In addition to being conspicuously posted, this notice must be mailed, delivered, or electronically transmitted to the unit owners. Sections 718.112(2)(c)1. and 719.106(1)(c), F.S.

<sup>29</sup> Section 720.303(2)(c)1., F.S.

<sup>30</sup> *Id.*

<sup>31</sup> See ch. 633, F.S., and the Florida Fire Prevention Code, <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/free-access?mode=view> (last visited April 11, 2017).

<sup>32</sup> An ELSS consists of a combination of partial automatic sprinkler protection, smoke detection alarms, smoke control, or compartmentation or other approved systems or both. See ss. 31.3.5.11.4 and 31.3.5.11.1, Florida Fire Prevention Code, 5th Edition, 2012.

<sup>33</sup> Sections 718.112(2)(l) and 719.1055(5)(a)1., F.S.

<sup>34</sup> *Id.*

The Chief Financial Officer, acting in his capacity as the State Fire Marshal, adopts by rule the Florida Fire Prevention Code (FFPC),<sup>35</sup> which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety rules.<sup>36</sup> The State Fire Marshal adopts a new edition of the FFPC every 3 years.

The FFPC requires all existing high-rise buildings,<sup>37</sup> including condominiums and cooperatives, to be retrofitted with fire sprinkler system or with an engineered life safety system (ELSS).<sup>38</sup> Florida adopted the requirement to retrofit high-rise, existing multi-family structures after 87 people died in the MGM Grand Hotel Fire in 1980 and 97 people died in the San Juan DuPont Plaza fire in 1986.<sup>39</sup>

In a report published in 2009, the Department of Business and Professional Regulation presented the estimated per-unit cost of retrofitting a sample of condominium buildings from Clearwater to the Keys. The per-unit cost varied widely, from \$595 to \$8,633. The factors said to account for this variation included the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.<sup>40</sup>

### **The Distressed Condominium Relief Act**

In 2010, in response to the housing crisis, the Legislature took action to improve this state's condominium market. The devastating downturn in the housing market, and in the economy in general, had left condominium projects unfinished or largely unpurchased. This was a problem for the associations that were not receiving dues from the empty units. It was also a problem for the developers who had finished a project but could not sell units. Additionally, it was problem for the lenders, who faced difficulty in receiving payment for their investment in the condominiums.<sup>41</sup> At the same time, there were those who were able to buy multiple units—which would benefit everyone involved—but who were often leery of the unknown risks and liabilities involved.<sup>42</sup>

Therefore, in 2010, the Legislature enacted the “Distressed Condominium Relief Act” to address some of the liabilities and risks that were keeping potential buyers from buying up the large numbers of available condominium units. More specifically, the legislation created the

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<sup>35</sup> A copy of the Florida Fire Prevention Code is available at: <http://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/free-access?mode=view> (last visited Apr. 13, 2017).

<sup>36</sup> Ch. 69A-60, F.A.C.

<sup>37</sup> A high-rise building is a building where the floor of an occupied story is greater than 75 feet (23 meters) above the lowest level of fire department vehicle access. Section 3.3.30.6, Florida Fire Prevention Code, 5th ed., 2012.

<sup>38</sup> Section 31.3.5.11.2, Florida Fire Prevention Code, 5th ed., 2012.

<sup>39</sup> Florida Fire and Sprinkler Association, High-rise Sprinkler retrofit requirement frequently asked questions, [http://www.floridafiresprinkler.com/files/4714/7122/2210/Hi\\_Rise\\_Retrofit\\_-\\_FAQ\\_Final.pdf](http://www.floridafiresprinkler.com/files/4714/7122/2210/Hi_Rise_Retrofit_-_FAQ_Final.pdf) (last visited Apr. 13, 2017).

<sup>40</sup> Department of Business and Professional Regulation, *Condominium Sprinkler Retrofit Report, A Review of Retrofit Costs and the Impact of Retrofitting on Insurance Premiums*, October 2009, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumSprinklerRetrofitReportOctober2009.pdf> (last visited Apr. 13, 2017).

<sup>41</sup> See, s. 718.702(1), F.S.

<sup>42</sup> See, s. 718.702(2), F.S.

designation of "bulk buyer"<sup>43</sup> and "bulk assignee,"<sup>44</sup> and provided these people with a favorable treatment under the law designed to address their apprehension about buying up what was or is this state's mass of empty condominium units. However, the Legislature found that "this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations."<sup>45</sup> Accordingly, a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the parcels were acquired between July 1, 2010, and July 1, 2018.<sup>46</sup>

## **Budgets and Reserve Accounts of Homeowners' Associations**

### ***Budgets***

Homeowners' associations must prepare an annual budget for the coming year that includes estimated revenues and expenses, estimated surplus or deficits, and sets out all fees and charges paid for by the association for recreational amenities.<sup>47</sup>

Unlike the board of a condominium association, however, the board of a homeowners' association is not required by current law to call a special meeting if the board adopts an annual budget that requires an assessment that exceeds 115 percent of assessments for the preceding fiscal year.<sup>48</sup>

### **Elections of Homeowners' Associations Boards of Directors**

Homeowners' associations are administered by an elected board of directors.<sup>49</sup> Elections must be conducted in accordance with the procedures set forth in an association's governing documents. And the members of the board must be elected from amongst the eligible members of the

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<sup>43</sup> "Bulk buyer" means "a person who acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707, but who does not receive an assignment of any developer rights, or receives only some or all of the following rights:

- (a) The right to conduct sales, leasing, and marketing activities within the condominium;
- (b) The right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer's acquisition of the units; and
- (c) The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third party purchaser concerning one or more units." Section 718.703(2), F.S.

<sup>44</sup> "Bulk assignee" means "a person who is not a bulk buyer and who:

- (a) Acquires more than seven condominium parcels in a single condominium . . . ; and
- (b) Receives an assignment of any of the developer rights, other than or in addition to those rights described in subsection (2), as set forth in the declaration of condominium or this chapter:
  1. By a written instrument recorded as part of or as an exhibit to the deed;
  2. By a separate instrument recorded in the public records of the county in which the condominium is located; or
  3. Pursuant to a final judgment or certificate of title issued in favor of a purchaser at a foreclosure sale.

A mortgagee or its assignee may not be deemed a bulk assignee or a developer by reason of the acquisition of condominium units and receipt of an assignment of some or all of a developer's rights unless the mortgagee or its assignee exercises any of the developer rights other than those described in subsection (2)." Section 718.703(1), F.S.

<sup>45</sup> Section 718.702(3), F.S.

<sup>46</sup> Section 718.707, F.S.

<sup>47</sup> Section 720.303(6)(a), F.S.

<sup>48</sup> See s. 718.112(2)(e)2.a., F.S., as to condominium associations' obligations in this regard.

<sup>49</sup> See, ss. 720.303 and 720.307, F.S.

association who have nominated themselves.<sup>50</sup> However, an election is not required unless more candidates are nominated than vacancies exist.<sup>51</sup>

### **Assessments by Homeowners' Associations**

Homeowners' associations may impose assessments on owners. Assessments and installments of assessments that are not timely paid accrue interest. Any payment received by an association for payment of an assessment or installment that accrued interest will first be applied to the interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees, and then to the delinquent assessment.<sup>52</sup>

## **III. Effect of Proposed Changes:**

### **Changes Common to Condominium, Cooperative, and Homeowners' Associations**

#### ***Financial Reporting Requirements for Associations of Cooperatives and Condominiums***

Under the bill, the associations of condominiums and cooperatives having fewer than 50 units are no longer required to prepare a report of cash receipts and expenditures, which they were required to do unless their governing documents provided otherwise. In effect, this means that these smaller associations are required to prepare financial statements in accordance with their annual revenue, just as the associations of larger condominiums and cooperatives must. As such, regardless of the number of units, the association of a condominium or cooperative having annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- Between \$150,000 and less than \$300,000 must prepare *compiled* financial statements.<sup>53</sup>
- At least \$300,000 but less than \$500,000 must prepare *reviewed* financial statements.<sup>54</sup>
- \$500,000 or more must prepare *audited* financial statements.<sup>55</sup>

However, the type of report or statement required may be adjusted by vote of the association.

Also, the bill strikes the following language from current law: "An association may not waive the financial reporting requirements of this section for more than 3 consecutive years." However, the

<sup>50</sup> "A person is not eligible as a candidate if he or she is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name shall not be listed on the ballot." Section 720.306(9)(b), F.S.

<sup>51</sup> Section 720.306(9)(a), F.S.

<sup>52</sup> Section 720.3085(3), F.S.

<sup>53</sup> A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

<sup>54</sup> A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

<sup>55</sup> An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*



effect of this deletion is uncertain because nowhere in the statute does it expressly permit an association to waive financial reporting requirements for any length of time.

### **Changes Common to Condominium and Cooperative Associations**

The bill makes several changes to the existing laws relating to fire safety compliance by condominium and cooperative associations.

#### ***When a Vote is Necessary to Opt Out of Retrofitting with Fire Prevention Systems***

Under current law, retrofitting with a fire sprinkler system is not required if an association votes to forego it. Under the bill, however, no vote by the association is necessary to forego retrofitting in buildings that are 75 feet or less in height; as to taller buildings, associations must still vote to forego retrofitting.

Also, current law only permits an association to forego required retrofitting *with a fire sprinkler system*. However, even if an association votes to forego retrofitting with a fire sprinkler system, retrofitting with an engineered lifesafety system (ELSS) may still be required. The bill addresses this issue, clarifying that when an association is permitted to forego retrofitting with a fire sprinkler system, it is also permitted to forego retrofitting with an ELSS.

#### ***Procedural Matters Relating to a Vote to Opt Out of Retrofitting***

In addition to the several ways provided in current law to vote as to whether to forego retrofitting, the bill also permits “electronic voting.” The bill further provides that an associations failure to provide timely notice to unit owners of a vote to forego retrofitting requirements does not invalidate the vote if notice of the results is provided to the owners.

Under the bill, as under current law, a vote to forego retrofitting may be reversed by a subsequent vote. Current law permits this subsequent vote only when at least 10 percent of the voting interests call for it, but the bill also permits a majority of the board to call for a vote to reconsider retrofitting. These votes to consider retrofitting can occur at any time because the bill repeals the prohibition on these reconsideration votes happening more often than once every three years.

#### ***Other Fire Safety System Provisions***

Under current law, a condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and that did not vote to forego these requirements had until December 31, 2016, to apply for a building permit. Under the bill, these associations now have until December 31, 2018. Under current law, the application for a building permit must demonstrate that the association will become compliant by December 31, 2019, a date which the bill changes to December 31, 2021.

Under current law, condominiums and cooperatives that complete retrofitting must receive a certificate of compliance from a licensed electrical contractor or electrician as evidence of compliance with the applicable fire and life safety code. As to condominiums only, the bill requires this certificate to be from a professional engineer.

Lastly, the bill provides that a local authority having jurisdiction may not require completion of retrofitting *or other ELSS* before January 1, 2022, instead of the compliance date set forth in current law, which is December 31, 2019.

### ***Notice of Board Meetings***

Under the bill, notice of a meeting of the board of a condominium or cooperative association may be posted to a website. However, for this notice to be sufficient, an association must have adopted, by rule, a procedure for posting notice in this manner and the association must provide unit owners with an electronic notice with a hyperlink to the website containing the meeting notice. Nonetheless, boards may still post notice of meetings in the ways permitted under current law.

### ***Electronic Records***

The bill adds *electronic* records relating to voting to the list of official records that a condominium or cooperative association must maintain.

## **Changes Relating Only to Condominium Associations**

### ***Official Records of Associations of Condominiums***

The bill requires condominium associations to maintain as an official record all bids and contracts for work performed for 1 year instead of 7 years, as current law requires. This conforms condominium law in this regard to the laws regulating homeowners' associations and cooperative associations.

### ***Distressed Condominium Relief Act***

Under current law, a person who acquires 8 or more condominium parcels between July 1, 2010, and July 1, 2018, may be classified as a "bulk assignee" or "bulk buyer." This classification provides the person with favorable treatment under the law. The bill deletes the temporary timeframe in which a person may become a bulk assignee or bulk buyer, allowing the favored classification to be available indefinitely.

In 2010, the Legislature passed the Distressed Condominium Relief Act to address the effect of the recession on Florida's condominium communities and developers, as well as the lenders who invested in these buildings. Even with the recession, there were many wealthy persons on the sideline who could afford to buy up this state's large inventory of unpurchased and foreclosed units, but who were leery of the risk and liability associated with doing so. The Act reduced certain elements of this risk and liability for persons who bought 8 or more units and otherwise met the statutory definitions of "bulk buyer" or "bulk assignee." However, the Legislature found that "this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations."<sup>56</sup> Accordingly, a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the parcels were acquired between July 1, 2010, and July 1, 2018.<sup>57</sup>

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<sup>56</sup> Section 718.702(3), F.S.

<sup>57</sup> Section 718.707, F.S.

### **Changes Relating Only to Cooperative Associations**

Regarding cooperative associations, the bill strips a director or officer of the board of a cooperative association of his or her post if he or she is more than 90 days delinquent in paying any money due the association. The bill also prohibits co-owners of a unit from serving simultaneously on the board of a cooperative association that has more than 10 units.

### **Changes Relating Only to Homeowners' Associations**

#### ***Budgets Including 15 Percent Increases in Assessments***

The bill requires the board of a homeowners' association to call a special meeting if:

- The board adopts an annual budget that requires an assessment that exceeds 115 percent of assessments for the preceding fiscal year; and
- Ten percent of the voting interests submit a written request for the meeting within 21 days after the budget was adopted.

At this special meeting, the parcel owners may consider and adopt a substitute budget.

These new provisions closely resemble existing condominium law.

#### ***Elections***

Current law authorizes an association to opt out of having an election to fill board vacancies if the number of qualified candidates does not exceed the number of vacancies. The bill provides that if this is the case, and if nominations from the floor at a meeting are not required by law or an association's bylaws, write-in nominations are not permitted. And the duly-nominated candidates may commence service on the board of directors regardless of whether a quorum is attained at the annual meeting.

#### ***Restrictions on Past-Due Payments on Assessments***

Current law requires that any payment for past-due assessments by a parcel owner be applied toward the following items, in order, if they exist in a given case:

- Interest accrued on a past-due assessment;
- Administrative late fees;
- Costs and reasonable attorney fees incurred in collection; and
- Delinquent assessments.

The bill clarifies that payments will be applied in this order regardless of any instruction, restrictive designation, or similar note written on the payment by the payor, and regardless of s. 673.3111, F.S., regarding accord and satisfaction.

#### **Effective Date**

The bill takes effect July 1, 2017.

**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 bill may have a positive impact on property owners in condominium or cooperative buildings that are 75 feet or less in height, as these property owners are now exempt from the requirement that their buildings be retrofitted with fire safety systems.

The bill may cause a negative impact on homeowners' associations that have fewer than 50 parcels, as well as condominium and cooperative associations that have fewer than 50 units, which, under current law, must only prepare a statement of cash receipts and expenditures, instead of a more rigorous type of financial report. Depending on these associations' revenues, they may now be required to engage more-costly accounting services to prepare their financial reports.

However, the bill may also reduce costs to condominium associations to prepare financial statements because the bill no longer prohibits associations from voting for more than 3 consecutive years to authorize less comprehensive financial reporting requirements than are otherwise required by current law.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.113, 718.707, 719.104, 719.1055, 719.106, 719.107, 720.303, 720.306, and 720.3085.

**IX. Additional Information:**

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

None.

B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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