

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 Committee on Banking and Insurance

BILL: SB 908

INTRODUCER: Senator Hooper

SUBJECT: Firesafety Systems

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 908 makes various changes as it relates to fire safety and residential condominiums.

The bill requires fire protection system reports be submitted pursuant to a statewide set of uniform procedures and gives the Division of State Fire Marshal rulemaking authority to establish those procedures.

The bill extends the deadlines for the following actions necessary for existing high-rise residential condominiums to comply with the Florida Fire Prevention Code requirements for fire sprinkler and engineered life safety systems:

- A final fire sprinkler permit application and supporting documents must be submitted to the authority having jurisdiction by July 1, 2020;
- All necessary permits must be obtained by July 1, 2021; and
- Final inspection must be passed by December 31, 2022.

Residential condominium associations that fail to timely comply are subject to a daily fine of \$500. The bill removes the option for a condominium associations to vote to opt out of fire safety requirements.

The bill includes required retrofitting of fire sprinkler and engineered life safety systems for existing high-rise residential condominiums to the list of “qualifying improvements” that local governments may supply funding sources for the improvement to real property under the Property Assessed Clean Energy Program (PACE) authorized by s. 163.08, F.S. Condominium associations that elect to make qualifying improvements are authorized by the bill to elect to be assessed upon the condominium property as a whole for ad valorem taxes, benefit taxes, and special assessments by taxing authorities, rather than assigning to each unit owner a portion of the common area value.

II. Present Situation:

The Property Assessed Clean Energy Program (PACE)

The Property Assessed Clean Energy Program (PACE) enables local governments to encourage property owners to reduce energy consumption and increase energy efficiency. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government provides the upfront funding for the project through proceeds from issuing a revenue bond, which are repaid by assessments on participating property owners' tax bills.¹

The Department of Business and Professional Regulation

The Division of Condominiums, Timeshares and Mobile Homes (the Division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities. A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.²

State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.³

¹ For more information, see <http://www.pacenow.org> and <http://floridapace.gov/> (last visited March 13, 2019).

² Sections 718.103(11) and 718.104(2), F.S.

³ Section 633.104, F.S.

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and 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 laws and rules, at ch. 69A-60, F.A.C.

The State Fire Marshal adopts a new edition of the Fire Code every 3 years. The most recent Fire Code is the 6th edition, which is referred to as the 2017 Florida Fire Prevention Code. When adopting the Fire Code, the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA’s Fire Code 1;
- Life Safety Code 101; and
- Guide on Alternative Approaches to Life Safety 101A.⁴

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state. The State Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.⁵

Fire Safety Enforcement by Local Governments

Current law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.⁶

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal. Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.⁷

Section 633.208(5), F.S., states, “With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety.” Pursuant to s. 633.208(5), F.S., local fire officials shall apply the Fire Code for

⁴ Section 633.202, F.S.; Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, <http://www.nfpa.org/about-nfpa> (last visited on March 12, 2019).

⁵ Sections 633.104(6) and 633.202, F.S.

⁶ Sections 633.108, 633.208, & 633.214(4), F.S.

⁷ Sections 633.118 and 633.216(1), F.S.

existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.

Fire Sprinklers and Engineered Life Safety Systems

The Fire Code requires existing multi-family buildings 75 feet or taller (approximately seven stories), including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.⁸ All condominiums and cooperatives built since 1994 that are three stories or more have sprinkler systems and thus are in compliance.⁹

The Fire Code allows a building to have an Engineered Lifesafety System (ELSS) as an alternative to a sprinkler system. The Fire Code defines an ELSS as a system that consists of a combination of:

- partial automatic sprinkler protection;
- smoke detection alarms;
- smoke control; and
- compartmentation or other approved systems.¹⁰

The Fire Code also does not require existing multi-family buildings 75 feet or taller to retrofit if every dwelling unit in the building has an exterior exit access.¹¹

For condominium and cooperative associations that complete retrofitting a certificate of compliance from a licensed electrical contractor or electrician may be accepted as evidence of compliance of the units with the Fire Code.

Licensed Fire Protection System Contractor Reports

Currently, licensed fire protection system contractors are mandated to conduct inspections of fire protection systems pursuant to the Florida Fire Prevention Code. Section 633.312, F.S., mandates that the inspecting contractor provide the building owner and the local authority having jurisdiction a copy of the inspection report. There are no limitations on inspection report format or uniform submission requirements. Some local jurisdictions have contracted with third-party software vendors and require the submission of inspection reports to their jurisdiction to be done via these systems.

History and Current Law of Retrofitting

In 2000, the State Fire Marshal adopted the national fire and life safety standards set forth by the NFPA into the Fire Code. This required existing multi-family buildings 75 feet or taller including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.

⁸ Section 13.3.2.26 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

⁹ Section 553.895(2), F.S.

¹⁰ 101:31.3.5.12.3 & 101: 31.3.5.12.4 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

¹¹ 101:31.3.5.12.2 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

In 2003, the Legislature amended the requirement to retrofit a residential condominium or cooperative building by providing that:

- Unit owners in residential condominium and cooperative associations may vote to forego retrofitting a building with a fire sprinkler system or an ELSS. A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected association.
- Local governments may not require an association to retrofit before the end of 2014.
- Associations could not vote to forego retrofitting a sprinkler system in any “common area” of a “high rise” building.
 - The common area of a high-rise building includes any enclosed hallway, corridor, lobby, stairwell, or entryway.
 - A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.¹²

In 2006, Governor Bush vetoed House Bill 391 of the 2006 legislative session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025.

In 2009, Governor Crist vetoed Senate Bill 714 of the 2009 legislative session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025. Governor Crist, also directed DBPR to initiate a review of the costs to retrofit and the impacts retrofitting may have on insurance premiums.¹³

In October 2009, DBPR completed their report. DBPR’s report estimated that retrofitting a condominium with sprinklers would cost from \$595 to \$8,633 per unit. The costs vary depending on a number of factors such as the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.¹⁴ However, the cost to retrofit a building can range from \$5,000 per unit to in excess of \$20,000 per unit.¹⁵ According to DBPR, they received 19 certificates from associations stating they completed retrofitting since 2004. Five of those certificates included the cost to complete retrofitting, which ranged from \$908 per unit to \$3,291 per unit with an average of \$2,196 per unit.

DBPR’s report also stated an association could expect to receive a 5 percent discount on the “all other perils” portion of their property and casualty insurance policy. DBPR stated that “many associations have foregone retrofits because they are cash strapped in the current economy. With many units sitting empty or in foreclosure and not paying assessments, some condominiums are scraping by just paying their normal expenses.”¹⁶

In 2010, the Legislature amended the law regarding retrofitting by:

¹² Sections 718.112(2)(l) and 719.1055(5) (2003), F.S.

¹³ Letter from Charlie Crist, Governor of the state of Fla., to Kurt S. Browning, Sec’y of State (June 1, 2009), http://www.butler.legal/files/2009_sb714.pdf (last visited March 12, 2019).

¹⁴ Department of Business & Professional Regulation, Condominium Sprinkler Retrofit Report, October 2009.

¹⁵ Testimony from Representative Michael Grieco, *3/6/2019 Meeting of the House Business & Professions Subcommittee*, <https://thefloridachannel.org/videos/3-6-19-house-business-and-professions-subcommittee/> (last visited March 12, 2019).

¹⁶ Department of Business & Professional Regulation, *supra* note 15.

- Providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high-rise building.
- Reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote.
- Removing the ability of residential condominium or cooperative associations to vote to forego retrofitting an ELSS.
- Prohibiting local governments from requiring retrofitting before January 1, 2020.¹⁷

In 2017, the Governor vetoed House Bill 653 of the 2017 legislative session, which included similar language to this bill, including the following:

- Provided that in addition to being able to forego retrofitting a building with a fire sprinkler system, associations may also vote to forego retrofitting a building with an ELSS.
- Provided that a vote to forego retrofitting required a two-thirds vote of all voting interests.
- Provided that all condominium or cooperative associations that operate buildings that are greater than 75 feet in height may vote to waive retrofitting requirements.
- Extended the time that local governments may not require associations to retrofit.
- Extended the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting.
- Required a board that operates a building that has not installed a sprinkler system in the common areas to post a sign on the outside of the building to warn persons conducting fire control and other emergency operations that there is not a sprinkler system in the building.
- Required the State Fire Marshal to promulgate rules regarding the size and color of the sign, the time period within which a sign must be posted, and the location of the sign. However, the rules may not require an association to post a sign that diminishes the aesthetic value of a building.

Governor Scott stated his reasons for vetoing were:

“Fire sprinklers and enhanced life safety systems are particularly effective in improving the safety of occupants in high-rise buildings and ensure the greatest protection to the emergency responders who bravely conduct firefighting and rescue operations. While I am particularly sensitive to regulations that increase the cost of living, the recent London high-rise fire, which tragically took at least 79 lives, illustrates the importance of life safety protections.”¹⁸

Current law provides that:

- An association or unit owner is not required to retrofit common elements, association property, or units of a residential condominium with a sprinkler system in a building if:
 - The building has been certified for occupancy by the applicable government entity; and
 - The unit owners vote to forego retrofitting by a majority vote of all voting interests.
- Current law only applies to fire sprinkler systems. An association may not vote to forego retrofitting a building with an ELSS.
- Local governments may not require an association to retrofit a fire sprinkler system before January 1, 2020.

¹⁷ Sections 718.112(2)(l), and 719.1055(5), F.S.

¹⁸ Letter from Rick Scott, Governor of the State of Fla., to Ken Detzner, Sec’y of State (June 26, 2017), <https://www.flgov.com/wp-content/uploads/2017/06/HB-653-Veto-Letter.pdf> (last visited March 12, 2019).

- An association that has not retrofitted with a sprinkler system or an ELSS, and has not voted to waive retrofitting must initiate an application for a building permit with the local government to begin retrofitting.
- Current law only applies to residential condominiums. Nonresidential condominiums may not vote to forego any retrofitting requirements.
 - Residential condominiums consist of two or more units, any of which are intended for use as a private temporary or permanent residence. A condominium that contains commercial and residential units is a mixed-use condominium. Residential cooperatives consist of units, which are intended for use as a private residence. If a cooperative has commercial and residential units then the cooperative is a residential cooperative with respect to those units intended for use as a private residence.¹⁹

Current law does not specify whether an association has to retrofit or vote to forego retrofitting for a building that is 75 feet or less in height.

Vote to Forego Retrofitting

A vote to forego retrofitting may be obtained by limited proxy, a personally cast ballot at a membership meeting, or by execution of a written consent by the member. An association's vote to forego retrofitting is effective upon recording a certificate attesting to such vote in the public records for the county of the association.²⁰

An association must mail or hand deliver each unit owner written notice of the vote. After the vote to forego, notice of the results must be mailed or hand delivered to all unit owners. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing, and by a unit owner to a renter before signing a lease.²¹

If there has been a previous vote to forego retrofitting then a vote to require retrofitting may be held at a special meeting of the unit owners called by a petition of least 10 percent of the voting interests. Such vote may be called once every 3 years. Electronic transmission may not be used to provide notice of the special meeting.²²

As part of the annual information collected from associations, the Division requires associations to report a membership vote to forego retrofitting, record a certificate if an association voted to forego, and, if retrofitting has been undertaken, the per-unit cost of such work. The Division must annually report to the State Fire Marshal the number of associations that have elected to forego retrofitting.²³ According to the Division, they received 4,329 certificates to forego retrofitting since 2004. The Division also received 19 certificates stating retrofitting had been completed. Five of those certificates included the cost to complete retrofitting, which ranged from \$908 per unit to \$3,291 per unit with an average of \$2,196 per unit.

¹⁹ Sections 718.112(2)(l), 719.103(22)-(23), & 719.1055(5), F.S.

²⁰ Sections 718.112(2)(l), & 719.1055(5), F.S.

²¹ *Id.*

²² *Id.*

²³ *Id.*

Ad Valorem Taxation on Condominium Parcels

Current law²⁴ states that ad valorem taxes, benefit taxes, and special assessments by taxing authorities are assessed against condominium parcels and not upon the condominium property as a whole. Ad valorem taxes, benefit taxes, and special assessments may not be separately assessed against recreational facilities or other common elements if the recreational facilities or common elements are owned by the condominium association or jointly owned by the owners and the condominium parcels. Each parcel in the condominium is separately assessed for ad valorem taxes and special assessments as a single parcel. Taxes and special assessments levied against each condominium parcel are a lien only upon the condominium parcel and not on any other portion of the condominium property.

III. Effect of Proposed Changes:

Fire Protection System Inspection Reports

Section 2 – Requires fire protection system inspection reports completed by fire protection system contractors to be submitted pursuant to a statewide uniform set of procedures. The procedures are to apply to a local authority having jurisdiction or a third-party vendor contracted for the collection of such reports. The State Fire Marshal is to adopt a rule requiring all third-party vendors or local authorities having jurisdiction to follow a standardized procedure, including:

- A uniform reporting format that must be used by all local authorities having jurisdiction and that is designed to reduce the amount of information a contractor must manually input into the system.
- A set of uniform submission procedures to be used by local authorities having jurisdiction or by vendors.

The rule must allow a contractor to attach additional documents, including the contractor's detailed inspection report, to the submission. A contractor's inspection report is not required to follow a standardized format, and a vendor or local authority having jurisdiction may not require a contractor to enter the details of the inspection report or of the deficiency repair status into an electronic system.

Firesafety Requirements for Condominium Associations

Section 3 – Requires an association ensure reasonable compliance with the Florida Fire Prevention Code. Under this section “reasonable compliance” means the ability to select alternative solutions to ensure that the property meets the level of firesafety required by the Florida Fire Prevention Code. As to a residential condominium building that is a high-rise building as defined under the Florida Fire Prevention Code, the association may either retrofit a fire sprinkler system or install an engineered life safety system as specified in the Florida Fire Prevention Code.

²⁴ Section 718.120(4), F.S.

Additionally, the local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system or completion of installation of an engineered life safety system before January 1, 2023. A residential condominium association that is not in compliance with the requirements for a fire sprinkler system or an engineered life safety system shall:

- By July 1, 2020, submit a final fire sprinkler permit application and supporting documents to the authority having jurisdiction;
- By July 1, 2021, obtain all necessary permits; and
- By December 31, 2022, pass final inspection.

If a residential condominium association fails to timely comply with such requirements, the authority having jurisdiction shall assess a penalty against the association in the amount of \$500 per day until compliance is met. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall collect all such penalty payments and remit them to the Firefighter Assistance Grant Program created under s. 633.135, F.S.

The section also repeals current law that allows Electrical Contractors licensed under ch. 633, F.S., to certify a building's fire sprinkler compliance. Furthermore this section repealed language that allows unit owners to vote to opt out of the required retrofitting for fire sprinkler systems. Under this repeal all applicable residential condominium buildings must comply with the new retrofitting deadline for fire sprinkler systems.

PACE Funding to Retrofit High-Rise Residential Condominiums With Fire Sprinkler Systems

Section 1 – The bill adds to the definition of “qualifying improvement” under s. 163.08(2)(b), F.S., an improvement to retrofit an existing high-rise residential condominium with a fire sprinkler system in accordance with the Florida Fire Prevention Code. Such improvements include fire sprinkler systems and related improvements or engineered life safety system improvements. This would allow local governments to use the PACE funding program provide the upfront funding for the improvements through proceeds from issuing a revenue bond that would then be repaid through assessments on the residential condominium or unit owner's tax bills.

Section 4 – Provides that condominium associations that elect to make a qualifying improvement may elect to be assessed by taxing authorities upon the condominium property as a whole, rather than assigning to each unit owner a portion of the common area's value. Such election must be made to the taxing authorities before implementing such improvements. Upon completion of the improvements and termination of any finance agreements the condominium association may elect to go back to being assessed per unit owner parcel.

Section 5 – Reenacts s. 288.9606, F.S., to clarify that the Florida Development Finance Corporation can issue revenue bonds for the new fire sprinkler systems and engineered life safety systems improvements to s. 163.08, F.S.

Effective Date

Section 6 – The effective date of the bill is upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

All applicable condominium buildings must comply with the new deadlines for retrofitting fire sprinkler or life safety systems, including associations that voted in the past to exempt their building from current requirements.

C. Government Sector Impact:

The Department of Business and Professional Regulation states they would incur non-recurring cost of \$46,352 the first year and a recurring cost of \$40,503 for staffing and software updates relating to tracking association compliance and the collection of fines and penalties.²⁵

²⁵ Department of Business and Professional Regulation, Agency Analysis SB 908, (February 28, 2019) (on file with Senate Committee on Banking and Insurance).

VI. Technical Deficiencies:

Lines 136 – 140 state that “a vendor or local authority having jurisdiction may not require a contractor to enter the details of the inspection report or of the deficiency repair status into an electronic system. This exception appears to preclude contractor reporting into an electronic system, and thus appears to conflict with lines 119-136, which require the development of a uniform reporting format that must be used by contractors when submitting fire protection system inspection reports.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.08, 633.312, 718.112, and 718.120.

This bill reenacts section 288.9606 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.