

By Senator Pizzo

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1 A bill to be entitled
2 An act relating to investments by condominium
3 associations; amending s. 718.111, F.S.; requiring
4 condominium associations to maintain a copy of their
5 investment policy statement as an official record;
6 authorizing associations to invest funds in specified
7 investment products; requiring certain association
8 boards to annually develop an investment policy
9 statement and select an investment adviser who meets
10 specified requirements; authorizing investment fees
11 and commissions to be paid from invested reserve funds
12 or operating funds; requiring investment advisers to
13 invest certain operating or reserve funds in
14 compliance with a specified rule; requiring investment
15 advisers to act as association fiduciaries; providing
16 construction; requiring that certain funds be held in
17 specified accounts; requiring associations to provide
18 their investment adviser with certain documents at
19 least annually; requiring investment advisers to
20 annually review such documents and provide the
21 association with a portfolio allocation model that
22 meets specified requirements; providing that
23 portfolios may not contain certain investments;
24 requiring investment advisers to annually provide to
25 the association a certain certification and to
26 periodically submit certain reports; requiring that
27 certain funds be made available to associations within
28 a certain timeframe after they submit a written or
29 electronic request; requiring that a certified public

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30 accountant at least annually provide associations with
31 specified information; amending s. 718.112, F.S.;
32 specifying that certain votes are required to make
33 specified investments; specifying that only certain
34 voting interests may vote on questions that involve
35 certain investments; amending s. 718.3026, F.S.;
36 exempting registered investment advisers from certain
37 provisions relating to contracts for products and
38 services; providing an effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Paragraph (a) of subsection (12) of section
43 718.111, Florida Statutes, is amended, and subsection (16) is
44 added to that section, to read:

45 718.111 The association.—

46 (12) OFFICIAL RECORDS.—

47 (a) From the inception of the association, the association
48 shall maintain each of the following items, if applicable, which
49 constitutes the official records of the association:

50 1. A copy of the plans, permits, warranties, and other
51 items provided by the developer pursuant to s. 718.301(4).

52 2. A photocopy of the recorded declaration of condominium
53 of each condominium operated by the association and each
54 amendment to each declaration.

55 3. A photocopy of the recorded bylaws of the association
56 and each amendment to the bylaws.

57 4. A certified copy of the articles of incorporation of the
58 association, or other documents creating the association, and

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59 each amendment thereto.

60 5. A copy of the current rules of the association.

61 6. A book or books that contain the minutes of all meetings
62 of the association, the board of administration, and the unit
63 owners.

64 7. A current roster of all unit owners and their mailing
65 addresses, unit identifications, voting certifications, and, if
66 known, telephone numbers. The association shall also maintain
67 the e-mail addresses and facsimile numbers of unit owners
68 consenting to receive notice by electronic transmission. The e-
69 mail addresses and facsimile numbers are not accessible to unit
70 owners if consent to receive notice by electronic transmission
71 is not provided in accordance with sub-subparagraph (c)3.e.
72 However, the association is not liable for an inadvertent
73 disclosure of the e-mail address or facsimile number for
74 receiving electronic transmission of notices.

75 8. All current insurance policies of the association and
76 condominiums operated by the association.

77 9. A current copy of any management agreement, lease, or
78 other contract to which the association is a party or under
79 which the association or the unit owners have an obligation or
80 responsibility.

81 10. Bills of sale or transfer for all property owned by the
82 association.

83 11. Accounting records for the association and separate
84 accounting records for each condominium that the association
85 operates. Any person who knowingly or intentionally defaces or
86 destroys such records, or who knowingly or intentionally fails
87 to create or maintain such records, with the intent of causing

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88 harm to the association or one or more of its members, is
89 personally subject to a civil penalty pursuant to s.
90 718.501(1)(d). The accounting records must include, but are not
91 limited to:

92 a. Accurate, itemized, and detailed records of all receipts
93 and expenditures.

94 b. A current account and a monthly, bimonthly, or quarterly
95 statement of the account for each unit designating the name of
96 the unit owner, the due date and amount of each assessment, the
97 amount paid on the account, and the balance due.

98 c. All audits, reviews, accounting statements, and
99 financial reports of the association or condominium.

100 d. All contracts for work to be performed. Bids for work to
101 be performed are also considered official records and must be
102 maintained by the association.

103 12. Ballots, sign-in sheets, voting proxies, and all other
104 papers and electronic records relating to voting by unit owners,
105 which must be maintained for 1 year from the date of the
106 election, vote, or meeting to which the document relates,
107 notwithstanding paragraph (b).

108 13. All rental records if the association is acting as
109 agent for the rental of condominium units.

110 14. A copy of the current question and answer sheet as
111 described in s. 718.504.

112 ~~15. All other written records of the association not~~
113 ~~specifically included in the foregoing which are related to the~~
114 ~~operation of the association.~~

115 ~~16.~~ A copy of the inspection report as described in s.
116 718.301(4)(p).

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117 ~~16.17.~~ Bids for materials, equipment, or services.

118 17. A copy of the investment policy statement adopted
119 pursuant to sub-subparagraph (16)(b)1.a.

120 18. All other written records of the association not
121 specifically included in the foregoing which are related to the
122 operation of the association.

123 (16) INVESTMENT OF ASSOCIATION FUNDS.-

124 (a) Unless otherwise prohibited in the declaration, and in
125 accordance with s. 718.112(2)(f), an association, including a
126 multicondominium association, may invest any funds in one or any
127 combination of investment products described in this subsection.

128 (b) If an association invests funds in any type of
129 investment product other than a depository account described in
130 s. 215.47(1)(h), the association must meet all of the following
131 requirements:

132 1.a. The board shall annually develop and adopt a written
133 investment policy statement and select an investment adviser who
134 is registered under s. 517.12 and who is not related by affinity
135 or consanguinity to any board member or unit owner. Any
136 investment fees and commissions may be paid from the invested
137 reserve funds or operating funds.

138 b. The investment adviser selected by the board shall
139 invest any funds not deposited into a depository account
140 described in s. 215.47(1)(h) by the board and shall comply with
141 the prudent investor rule in s. 518.11. The investment adviser
142 shall act as a fiduciary to the association in compliance with
143 the standards set forth in the Employee Retirement Income
144 Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case
145 of conflict with other provisions of law authorizing

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146 investments, the investment and fiduciary standards set forth in
147 this sub-subparagraph shall prevail.

148 c. Any funds invested under this subparagraph must be held
149 in third-party custodial accounts and are subject to insurance
150 coverage by the Securities Investor Protection Corporation in an
151 amount equal to or greater than the assets held.

152 2. At least once each calendar year, the association shall
153 provide the investment adviser with the association's investment
154 policy statement, the most recent reserve study report or a good
155 faith estimate disclosing the annual amount of reserve funds
156 which would be necessary for the association to fully fund
157 reserves for each reserve item, and the financial reports
158 prepared pursuant to subsection (13). The investment adviser
159 shall annually review these documents and provide the
160 association with a portfolio allocation model that is suitably
161 structured to match projected reserve fund and liability
162 liquidity requirements. There must be at least 36 months of
163 projected reserves in cash or cash equivalents available to the
164 association at all times.

165 (c) Portfolios managed by the investment adviser may
166 contain any type of investment necessary to meet the objectives
167 in the investment policy statement; however, portfolios may not
168 contain stocks, securities, or other obligations that the State
169 Board of Administration is prohibited from investing in under
170 ss. 215.471, 215.4725, and 215.473 or that state agencies are
171 prohibited from investing in under s. 215.472, as determined by
172 the investment adviser.

173 (d) The investment adviser shall:

174 1. Annually provide the association with a written

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175 certification of compliance with this section; and

176 2. Submit monthly, quarterly, and annual reports to the
177 association which are prepared in accordance with investment
178 industry standards.

179 (e) Any principal, earnings, or interest managed under this
180 subsection must be available at no cost or charge to the
181 association within 15 business days after delivery of the
182 association's written or electronic request.

183 (f) At least once each calendar year, the association must
184 select a certified public accountant to provide the association
185 with a statement verifying the invested fund transactions and a
186 report of cash receipts and disbursements for the invested
187 funds.

188 Section 2. Paragraph (f) of subsection (2) of section
189 718.112, Florida Statutes, is amended to read:

190 718.112 Bylaws.—

191 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
192 following and, if they do not do so, shall be deemed to include
193 the following:

194 (f) *Annual budget.*—

195 1. The proposed annual budget of estimated revenues and
196 expenses must be detailed and must show the amounts budgeted by
197 accounts and expense classifications, including, at a minimum,
198 any applicable expenses listed in s. 718.504(21). A
199 multicondominium association shall adopt a separate budget of
200 common expenses for each condominium the association operates
201 and shall adopt a separate budget of common expenses for the
202 association. In addition, if the association maintains limited
203 common elements with the cost to be shared only by those

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204 entitled to use the limited common elements as provided for in
205 s. 718.113(1), the budget or a schedule attached to it must show
206 the amount budgeted for this maintenance. If, after turnover of
207 control of the association to the unit owners, any of the
208 expenses listed in s. 718.504(21) are not applicable, they need
209 not be listed.

210 2.a. In addition to annual operating expenses, the budget
211 must include reserve accounts for capital expenditures and
212 deferred maintenance. These accounts must include, but are not
213 limited to, roof replacement, building painting, and pavement
214 resurfacing, regardless of the amount of deferred maintenance
215 expense or replacement cost, and any other item that has a
216 deferred maintenance expense or replacement cost that exceeds
217 \$10,000. The amount to be reserved must be computed using a
218 formula based upon estimated remaining useful life and estimated
219 replacement cost or deferred maintenance expense of each reserve
220 item. The association may adjust replacement reserve assessments
221 annually to take into account any changes in estimates or
222 extension of the useful life of a reserve item caused by
223 deferred maintenance. This subsection does not apply to an
224 adopted budget in which the members of an association have
225 determined, by a majority vote at a duly called meeting of the
226 association, to provide no reserves or less reserves than
227 required by this subsection.

228 b. Before turnover of control of an association by a
229 developer to unit owners other than a developer pursuant to s.
230 718.301, the developer may vote the voting interests allocated
231 to its units to waive the reserves or reduce the funding of
232 reserves through the period expiring at the end of the second

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233 fiscal year after the fiscal year in which the certificate of a
234 surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or
235 an instrument that transfers title to a unit in the condominium
236 which is not accompanied by a recorded assignment of developer
237 rights in favor of the grantee of such unit is recorded,
238 whichever occurs first, after which time reserves may be waived
239 or reduced only upon the vote of a majority of all nondeveloper
240 voting interests voting in person or by limited proxy at a duly
241 called meeting of the association. If a meeting of the unit
242 owners has been called to determine whether to waive or reduce
243 the funding of reserves and no such result is achieved or a
244 quorum is not attained, the reserves included in the budget
245 shall go into effect. After the turnover, the developer may vote
246 its voting interest to waive or reduce the funding of reserves.

247 3. Reserve funds and any earnings ~~interest~~ accruing thereon
248 shall remain in the reserve account or accounts, and may be used
249 only for authorized reserve expenditures unless their use for
250 other purposes, including investing funds pursuant to s.
251 718.111(16), is approved in advance by a majority vote at a duly
252 called meeting of the association. Before turnover of control of
253 an association by a developer to unit owners other than the
254 developer pursuant to s. 718.301, the developer-controlled
255 association may not vote to use reserves for purposes other than
256 those for which they were intended, including investing funds
257 pursuant to s. 718.111(16), without the approval of a majority
258 of all nondeveloper voting interests, voting in person or by
259 limited proxy at a duly called meeting of the association.

260 4. The only voting interests that are eligible to vote on
261 questions that involve waiving or reducing the funding of

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262 reserves, or using existing reserve funds for purposes other
263 than purposes for which the reserves were intended, including
264 investing funds pursuant to s. 718.111(16), are the voting
265 interests of the units subject to assessment to fund the
266 reserves in question. Proxy questions relating to waiving or
267 reducing the funding of reserves or using existing reserve funds
268 for purposes other than purposes for which the reserves were
269 intended, including investing funds pursuant to s. 718.111(16),
270 must contain the following statement in capitalized, bold
271 letters in a font size larger than any other used on the face of
272 the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR
273 ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN
274 UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL
275 ASSESSMENTS REGARDING THOSE ITEMS.

276 Section 3. Paragraph (a) of subsection (2) of section
277 718.3026, Florida Statutes, is amended to read:

278 718.3026 Contracts for products and services; in writing;
279 bids; exceptions.—Associations with 10 or fewer units may opt
280 out of the provisions of this section if two-thirds of the unit
281 owners vote to do so, which opt-out may be accomplished by a
282 proxy specifically setting forth the exception from this
283 section.

284 (2) (a) Notwithstanding the foregoing, contracts with
285 employees of the association, and contracts for attorney,
286 accountant, architect, community association manager, timeshare
287 management firm, engineering, registered investment adviser, and
288 landscape architect services are not subject to the provisions
289 of this section.

290 Section 4. This act shall take effect July 1, 2021.