

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 Rules

BILL: PCS/CS/SB 1702 (703878)

INTRODUCER: Rules Committee

SUBJECT: Mandatory Building Inspections

DATE: February 22, 2022 REVISED: 2/22/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
3.	<u>Oxamendi/Hunter</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1702 (703878) by Rules establishes a mandatory milestone inspection requirement for multifamily residential buildings. A milestone inspection is defined by the bill as a structural inspection of a building by a Florida-licensed architect or engineer for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.

Under the bill, multifamily buildings that are three stories or more in height have a milestone inspection once the building reaches 30 years in age, and every 10 years thereafter. If the building is within three miles of coastline, the milestone inspection must be conducted when the building reaches 20 years of age, and every 7 years thereafter. Inspections must be done by a licensed architect or engineer. An initial milestone inspection must be performed before December 31, 2024 if the building's certificate of occupancy was issued on or before July 1, 1992.

The bill provides a two-phase milestone inspection process consisting of a phase one visual inspection and a phase two structural inspection, which may involve more intensive destructive and nondestructive testing, if the phase-one visual inspection identifies structural distress. Local governments may prescribe timelines and penalties with respect to compliance.

The milestone inspection requirement does not apply to a two-family or three-family dwelling with three or fewer habitable stories above ground.

Upon completion of the milestone inspections, the:

- Architect or engineer who conducts the inspection must submit a sealed copy of the inspection report to the local building official and the board of administration for the condominium and cooperative association; and
- Board must distribute a copy of the inspection report to each unit owner.

The bill directs the Florida Building Commission to establish “comprehensive structural and life safety standards for maintaining and inspecting all buildings and structures” in Florida that are three stories or more in height by December 31, 2022. These standards must be made available for local governments to adopt at their discretion.

The bill revises the maintenance obligations for condominium and cooperative associations, to provide that:

- The association shall provide for the maintenance, repair, and replacement of specified association property;
- Necessary maintenance, repair, or replacement of condominium property is not a material alteration or substantial addition to the common elements or to real property requiring unit owner approval; and
- The association is not liable for alternative housing costs, lost rent, or other expenses if a resident must vacate a unit or is denied access to a common element for necessary maintenance, repair, or replacement of condominium property.

Effective January 1, 2024, the bill requires condominium and cooperative associations with a residential building that is three stories or more in height to conduct a reserve study at least once every three years, and specifies the matters that must be considered in the reserve study. The reserve study must include a schedule for the full funding of reserves. Under the bill, a reserve account is fully funded when the actual or projected reserve balance in the reserve account is equal in direct proportion to the fraction of useful life for a given component or components. The board must annually review the results of the reserve study and make any necessary adjustments.

The bill revises the requirements for the funding of reserves, by:

- Permitting associations to satisfy their reserves funding obligations by using an alternative funding method; and
- Authorizing the board to adopt a special assessment or borrow money without unit owner voting or approval for the necessary maintenance, repair, or replacement of association property, notwithstanding any provision in the declaration requiring prohibiting or limiting such authority.

The bill maintains the current authority of members of condominium and cooperative associations to vote to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose. However, the bill permits a developer to waive reserves only if:

- The association's reserve obligations are funded consistent with the reserve study currently in effect; or
- The association provides an alternative funding mechanism for the association's reserve obligations.

The bill expands unit owner access to records, and provides additional disclosures relating to the funding of reserves by:

- Adding reserve studies and inspection reports to the list of official records of the association to which unit owners have the right to inspect and copy;
- Requiring copies of a milestone inspection report to be maintained for 15 years instead of the seven years required under current law;
- Adding the reserve study and inspection reports to the list of documents a condominium association of 150 or more units must make available on a website or through a mobile device application;
- Providing specific disclosures to unit owners in the annual budget as to any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect;
- Requiring developer and nondeveloper unit owners to provide copies of the milestone inspection report, if inspection was required, and the reserve study to prospective buyers of the unit.
- Requiring developer and nondeveloper unit owners to give prospective buyers of a unit a copy of the most recent reserve study and milestone inspection report before the applicable voidability period; and
- Providing specific disclosures in the prospectus or offering circular that must be provided to prospective purchasers of a condominium unit regarding any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect.

The bill provides for the mediation of disputes between unit owners and the association related to failure of a governing body to perform a structural or life safety inspection, including the milestone inspection, perform a reserve study, fund reserves, or make or provide necessary maintenance or repairs of association property.

The bill also revises the post-election certification requirements for condominium and cooperative association board members. Under the bill a board member for these associations must certify by affidavit that he or she has read the declaration of condominium, articles of incorporation, and cooperative proprietary lease, as applicable, and must complete an education curriculum administered by an education provider approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) within one year before, or 90 days after, his or her election or appointment. Under current law, a board member must certify in writing, as opposed to "by affidavit" as required in the bill, that he or she has read the applicable documents of the association or completed the approved education curriculum.

The bill takes effect July 1, 2022.

II. Present Situation:

Building Safety

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.² The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code (Building Code).³

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁴

The Florida Building Commission (commission) was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.⁵ The commission reviews several International Codes published by the International Code Council,⁶ the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated, and adopts an updated Building Code every three years.⁷

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 26, 2021).

² *Id.*; see also DBPR, *Building Code Information System*, at: <https://floridabuilding.org/c/default.aspx#> (last visited Feb. 21, 2022).

³ *Id.*

⁴ Section 553.72(1), F.S.

⁵ Section 553.74, F.S.

⁶ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Feb. 21, 2022).

⁷ Sections 553.73(7), F.S.

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.⁸ Every local government must enforce the Building Code and issue building permits.⁹ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.¹⁰

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.¹¹ Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.¹²

The Florida Building Code does not contain mandatory requirements for the maintenance and inspection of existing buildings in the state. However, local governments are empowered to enact such requirements at their discretion to apply throughout a local jurisdiction. Some local jurisdictions in the state have used the following model standards to aid in their adoption of local requirements for the maintenance and inspections of existing buildings: the International Property Maintenance Code, the Standard Housing Code, and the Standard Unsafe Building Abatement Code, or some combination thereof.¹³

Mandatory inspections of existing condominium buildings were once required by Florida law, but the law was repealed shortly after enactment. In 2008, the Legislature mandated that every condominium greater than three stories in height be inspected for maintenance, useful life, and replacement costs of the common elements every five years by an engineer or architect licensed in the state.¹⁴ A condominium association could waive this requirement for five years by a majority vote of interests present at a properly called meeting of the association.¹⁵ This provision was repealed in 2010.¹⁶

⁸ Section 553.72, F.S.

⁹ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹⁰ Sections 125.56(4)(a) and 553.79(1), F.S.

¹¹ 2020 Florida Building Code (7th ed.), s. 110.

¹² Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, at: <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Feb. 21, 2022).

¹³ See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 1702* at p. 2 (Jan. 7, 2022) (on file with the Senate Committee on Regulated Industries).

¹⁴ Ch. 2008-28, Laws of Fla.

¹⁵ *Id.*

¹⁶ Ch. 2010-176, s. 59, Laws of Fla.

Building Code Administrators and Inspectors and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (FBCAIB) within the DBPR. The FBCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate.¹⁷

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.¹⁸

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories in which the inspector has been licensed. The inspector categories are:¹⁹

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories in which the plans examiner has been licensed. The plans examiner categories are:²⁰

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

Threshold Building Inspections

In 1981, a “five-story Harbour Cay Condominium building in Cocoa Beach, Florida, collapsed during the placement of concrete for the roof slab, killing 11 workers and injuring 23 more.”²¹ In response to this tragedy, the Legislature instituted threshold building inspections, requiring

¹⁷ Section 468.605, F.S.

¹⁸ Section 468.603(2), F.S.

¹⁹ Section 468.603(5), F.S.

²⁰ Section 468.603(8), F.S.

²¹ National Institute of Standards and Technology, Harbour Cay Condominium Collapse Florida 1981, available at <https://www.nist.gov/el/harbour-cay-condominium-collapse-florida-1981> (last visited Jan. 26, 2022).

licensed “special inspectors” to conduct inspections for all threshold buildings.²² A special inspector is a licensed architect or registered engineer who is certified under chs. 471 or 481, F.S., to conduct inspections of threshold buildings.²³

A threshold building is defined as any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification, as defined in the Building Code, which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.²⁴ An enforcing agency must require a special inspector to perform structural inspections on a threshold building during new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified.²⁵

For a building that qualifies as a threshold building, a structural inspection plan must be submitted by the special inspector and the design professional of record to the enforcing agency prior to the issuance of a building permit for the construction of or modification to the building.²⁶ However, a fee-simple owner may declare a building a threshold building even when it does not meet the definitions.²⁷

The inspection plan for a threshold building provides specific inspection instructions to provide for the adequate inspection of the construction. The owner must retain the services of a special inspector who must inspect the building according to the special inspection plan. In addition, the inspector must determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency.²⁸ Special inspectors report directly to local building administrators and officials. The role of threshold building inspectors is unique to Florida.²⁹

There were 8,515 active Building Code Administrators/Inspectors licensed in Florida in Fiscal Year 2020-2021.³⁰

Local Building Recertification Programs

Florida does not require recertification of buildings or regular inspections of existing buildings, which is consistent with state building codes across the country. Miami-Dade and Broward Counties have amended their local building codes requiring a recertification process and inspection of buildings 40 years and older. Miami-Dade’s program was established in the 1970s,

²² Florida Building Commission, Florida Building Construction Standards available at https://www.floridabuilding.org/fbc/commission/FBC_0413/Commission_Education_POC/173/173-1-MATERIAL%20.pdf (last visited Jan. 26, 2022).

²³ See s. 553.71, F.S.

²⁴ *Id.*

²⁵ Section 553.79(5)(a), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Florida Board of Professional Engineers, *What Are Threshold Building Inspectors?*, available at <https://fbpe.org/what-are-threshold-building-inspectors/> (last visited Jan. 26, 2022).

³⁰ Department of Business and Professional Regulation, *2020-2021 Annual Report, Division of Certified Public Accounting, Division of Professions, Division of Real Estate, Division of Regulation* at p. 20, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Jan. 27, 2022).

and Broward County's program was modeled after Miami-Dade's and has been in effect since January 2006.³¹

Miami Dade's recertification program states that:

All buildings, except single-family residences, duplexes and minor structures as defined below, shall be recertified in the manner described below where such buildings or structures have been in existence for forty (40) years or longer, as determined by the Building Official, who shall at such time issue a Notice of Required Inspection to the building owner. Subsequent recertification shall be required at ten (10) years interval. In the event a building is determined to be structurally and electrically safe under the conditions set forth herein, and such building or structure is less than forty (40) years of age, recertification shall not be required for a minimum of ten (10) years from that time, or age forty (40), whichever is the longer period of time.³²

Inspection procedures shall "conform, in general, to the minimum inspection procedural guidelines" issued by the county, and are for the purpose of determining the general structural condition of the building or structure to the extent reasonably possible which affects the safety of the building or structure.³³ Miami-Dade's recertification program exempts buildings under 2,000 square feet,³⁴ and Broward's program exempts buildings under 3,500 square feet.³⁵ The inspections must be carried out by a professional engineer or architect registered with the State of Florida.³⁶

Following the 2021 tragedy in Surfside, Florida, where a 12-story condominium building, known as Champlain Towers South, unexpectedly experienced structural failure and partially collapsed, resulting in the death of 98 people, the concept of recertification programs gained considerable attention. The City of Boca Raton recently instituted a building recertification program for buildings over 30 years of age that are greater than three stories or 50 feet in height, or greater than 5,000 square feet and have an occupancy greater than 500 people.³⁷

³¹Broward County, Building Safety Inspection Program, available at <https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Jan. 26, 2022).

³² See Code of Miami-Dade, ch. 8 Building Code, s. 8-11(f)(ii), at https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH8BUCO_ARTIAD_S8-11EXBU (last visited Jan. 26, 2022).

³³ *Id.* at s. 8-11(f)(i).

³⁴ *Id.* at s. 8-11(f)(ii).

³⁵Broward County, Building Safety Inspection Program, available at: <https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Jan. 19, 2022)

³⁶ *Id.* and See Code of Miami-Dade, ch. 8, Building Code, s. 8-11(iv).

³⁷ City of Boca Raton. Ordinance 5589, available at: <https://www.myboca.us/DocumentCenter/View/28152/Ordinance-No-5589?bidId=> (last visited Jan. 21, 2022)

Community Associations

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,³⁸ recordkeeping requirements, including which records are accessible to the members of the association,³⁹ and financial reporting.⁴⁰ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., for associations that are still under developer control.⁴¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.⁴² After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.⁴³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁴⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers, associations, and association board members.⁴⁵

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.⁴⁶

³⁸ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

³⁹ See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

⁴⁰ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.

⁴¹ Sections 718.501(1) and 719.501(1), F.S.

⁴² *Id.*

⁴³ Section 718.501(1), F.S.

⁴⁴ Section 719.501(1), F.S.

⁴⁵ Sections 718.501(1) and 719.501(1), F.S.

⁴⁶ *Id.*

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.⁴⁷

Condominiums

A condominium is a “form of ownership of real property created under ch. 718, F.S.”⁴⁸ the “Condominium Act.” Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.⁴⁹ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁵⁰

A condominium association is administered by a board of directors referred to as a “board of administration.”⁵¹ The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represents the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.⁵²

There are 1,529,764 condominium units in Florida operated by 27,588 associations.⁵³ Approximately 912,376 of these condominium units in Florida are at least 30 years in age.⁵⁴ Further breakdown of the age of condominium units in Florida is as follows:

- 105,404 units – 50 years old or older;
- 479,435 units – 40-50 years old;
- 327,537 units – 30-40 years old;
- 141,773 units – 20-30 years old;
- 428,657 units – 10-20 years old; and
- 46,958 units – 0-10 years old.⁵⁵

It is estimated that there are over 2 million residents occupying condominiums 30 years or older in Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.⁵⁶

Cooperatives

Section 719.103(12), F.S., defines a “cooperative” to mean:

⁴⁷ See s. 720.306(9)(c), F.S.

⁴⁸ Section 718.103(11), F.S.

⁴⁹ See s. 718.103, F.S., for the terms used in the Condominium Act.

⁵⁰ *Id.*

⁵¹ Section 718.103(4), F.S.

⁵² Section 718.103(2), F.S.

⁵³ Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 4, available at: <https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf> (last visited Jan. 21, 2022).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.⁵⁷ The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁵⁸ There are 778 cooperative associations in Florida that are registered with the DBPR.⁵⁹

Official Records – Condominium and Cooperative Associations

Florida law specifies the official records that condominium and cooperative associations must maintain.⁶⁰ Generally, the official records must be maintained in Florida for at least seven years.⁶¹ Certain of these records must be accessible to the members of an association.⁶² Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.⁶³

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website or make such documents available through an application that can be downloaded on a mobile device.⁶⁴ Cooperative associations are not required to maintain such a website.

Budgets and Reserves - Condominium and Cooperative Associations

Condominium and cooperative associations must have a budget of estimated revenues and expenses.⁶⁵ The board must adopt the annual budget at least 14 days before the start of the association's fiscal year.⁶⁶

⁵⁷ See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), review dismissed 2020 WL 3442763 (Fla. 2020).

⁵⁸ See ss. 719.106(1)(g) and 719.107, F.S.

⁵⁹ See Task Force Report, pp. 4-5.

⁶⁰ See ss. 718.111(12) and 719.104(2), F.S., relating to condominium and cooperative associations, respectively.

⁶¹ See ss. 718.111(12)(b) and 719.104(2)(b), F.S., relating to condominium and cooperative associations, respectively.

⁶² See ss. 718.111(12)(a) and 719.104(2)(a), F.S., relating to condominium and cooperative associations, respectively.

⁶³ See ss. 718.111(12)(c) and 719.104(2)(c), F.S., relating to condominium and cooperative associations, respectively.

⁶⁴ Section 718.111(12)(g), F.S.

⁶⁵ Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to the annual budget for condominium and cooperative associations, respectively.

⁶⁶ *Id.*

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. Reserve accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.

The amount to be reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. Replacement reserve assessments may be adjusted annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.⁶⁷

Condominium and cooperative associations must maintain reserve funds and any interest accrued on the reserve funds in the reserve account or accounts. Reserve funds may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of unit owners at a duly called meeting of the association.⁶⁸

Condominium and cooperative associations, and their developers, may vote to not fund reserves, i.e., waive reserves, or to provide reserves less adequate than required.⁶⁹

Reserve Studies

A reserve study determines how much an association needs to collect in annual reserve contributions for the board to afford capital projects when they are needed. A reserve study includes a physical inspection of the association's property and a financial analysis of the association's current reserves, payments by unit or homeowners into the association's reserve account, and anticipated future expenditures, thus allowing the community to pay for capital projects as they become necessary.⁷⁰ Nine states require a reserve study or a reserve schedule for condominium associations.⁷¹

Current law does not require condominium and cooperative associations in Florida to conduct a reserve study.

Financial Reporting - Condominium and Cooperative Associations

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide comparable financial reporting requirements for condominium and cooperative associations, respectively.

Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to

⁶⁷ Sections 718.112(2)(f)2.a. and 719.106(1)(j)2., F.S., relating to condominium and cooperative associations, respectively.

⁶⁸ Sections 718.112(2)(f)3. and 719.106(1)(j)3., F.S., relating to condominium and cooperative associations, respectively.

⁶⁹ *Id.*

⁷⁰ See Community Association Institute, *Understanding and Utilizing Your Reserve Study to Ensure Long-Term Success*, at: <https://www.caicd.org/understanding-and-utilizing-your-reserve-study-to-ensure-long-term-success/> (last visited Jan. 29, 2022).

⁷¹ See Community Association Institute, *Reserve Requirements and Funding*, at: <https://www.caionline.org/Advocacy/Priorities/ReserveStudy/Pages/default.aspx> (last visited Jan. 29, 2020). The nine states are: California, Colorado, Delaware, Hawaii, Nevada, Oregon, Utah, Virginia, and Washington State.

complete, the financial report. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The division must adopt rules setting forth uniform accounting principles, standards, and reporting requirements for cooperative associations.⁷² For condominium associations, the division's rulemaking authority is broader; the division must adopt rules setting forth uniform accounting principles and standards to be used by all condominium associations and addressing the financial reporting requirements for multicondominium associations. For condominium associations, the division's rules must include, but not be limited to:

...standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association.

Developer Turnover Report - Condominium and Cooperative Associations

In a condominium or cooperative association, when the unit owners other than the developer are entitled to elect the majority of the board for the association, the developer must relinquish control of the association to the unit owners other than the developer. The developer of a condominium or cooperative is required to give certain items to the association when this change of control occurs.⁷³

In a condominium association, the developer must give the association a turnover inspection report which is included in the official records, under seal of an architect or engineer authorized to practice in Florida, that attests to required maintenance, useful life, and replacement costs of the following applicable common elements:⁷⁴

- Roof.
- Structure.
- Fireproofing and fire protection systems.
- Elevators.
- Heating and cooling systems.
- Plumbing.
- Electrical systems.
- Swimming pool or spa and equipment.
- Seawalls.
- Pavement and parking areas.

⁷² Section 719.104(4)(a), F.S.

⁷³ Sections 718.301 and 719.301, F.S., relating to the transfer of association control for condominium and cooperative associations, respectively.

⁷⁴ Section 718.301(4)(p), F.S.

- Drainage systems.
- Painting.
- Irrigation systems.

The developer of a cooperative is not required to provide a turnover inspection report.

Pre-sale Disclosures - Condominium and Cooperative Associations

Developers and nondeveloper owners of condominium or cooperative units must give certain documents to a prospective buyer or lessee before the execution of a contract for the sale of a residential unit.⁷⁵

The developer may not close for 15 days following the execution of a purchase contract, or execution of a lease of a residential unit for an unexpired term of more than five years, and the delivery of the required documents to the buyer, including the documents creating the association, the bylaws, and the estimated operating budget of the association. A prospective purchaser may void the contract within 15 days of his or her receipt of all the required documents.⁷⁶

A nondeveloper unit owner must provide the prospective buyer or lessee certain information, including the articles of incorporation, bylaws and rules, a copy of the most recent financial information, and a “Frequently Asked Questions and Answers” document.⁷⁷ These documents must be provided more than three days, excluding Saturdays, Sundays, and legal holidays, before the execution of the contract, or the sales contract is voidable by the prospective purchaser. These disclosures do not apply to the leasing of a residential unit by a nondeveloper owner.⁷⁸

Each contract for sale of a residential unit must contain in conspicuous type a statement acknowledging that the purchaser has received the document and his or her right to void the contract if the required documents are not provided more than three days, excluding Saturdays, Sundays, and legal holidays, before the execution of the contract.

Prospectus or Offering Circular - Condominium and Cooperative Associations

Every developer of a residential condominium or cooperative which contains more than 20 residential units, or which is part of a group of residential condominiums or cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, must prepare a prospectus or offering circular and file it with the division prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than five years. A copy of the prospectus or offering circular must be provided to each buyer.⁷⁹

⁷⁵ Sections 718.503 and 719.503, F.S.

⁷⁶ Sections 718.503(1) and 719.503(1), F.S., providing the developer disclosures before the sale or lease of a residential condominium or cooperative unit, respectively.

⁷⁷ See ss. 718.503(2) and 719.503(2), F.S., providing the nondeveloper disclosures before the sale of a residential condominium or cooperative unit, respectively.

⁷⁸ *Id.*

⁷⁹ Sections 718.504 and 719.504, F.S., requiring a prospectus or offering circular for a residential condominium or cooperative unit, respectively.

The prospectus or offering circular must contain certain information about the condominium or cooperative, including an estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses.⁸⁰

Alternative Dispute Resolution - Condominium and Cooperative Associations

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. Before the institution of court litigation, other than an election or recall dispute, a party to a dispute must either petition the division for nonbinding arbitration or initiate presuit mediation.

Disputes in cooperative associations, including recall election disputes, are subject to the same alternative dispute resolution requirements and procedures applicable to condominiums set forth in s. 718.1255, F.S.⁸¹

Alternative dispute resolution offers a more efficient, cost-effective option to court litigation, but alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.⁸²

Alternative dispute resolution is required for any disagreements between two or more parties that involves:⁸³

- The authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements;⁸⁴
- The board of directors' failure:
 - To properly conduct elections;
 - Give adequate notice of meetings;
 - Properly conduct meetings;
 - Provide access to association books and records; and
- A plan of termination pursuant to s. 718.117, F.S.

The division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve:⁸⁵

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or

⁸⁰ See ss. 718.504(21) and 719.504(20) and (21), F.S., requiring certain budget information for the condominium or cooperative be included in the prospectus or offering circular, respectively.

⁸¹ Sections 719.1255 and 719.106(1)(f), F.S.

⁸² Section 718.1255(3)(b), F.S., providing legislative findings regarding the advantages of pre-suit alternative dispute resolution.

⁸³ Section 718.1255(1)(a), F.S., defining the term "dispute."

⁸⁴ *Id.*

⁸⁵ *Id.*

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.⁸⁶

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,⁸⁷ or if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days after the arbitration decision is rendered.⁸⁸

The filing fee for a petition to the division to initiate nonbinding arbitration or presuit mediation is \$50.⁸⁹

The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center as provided in s. 44.201, F.S.⁹⁰

The mediation of disputes in condominium and cooperative association is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowner association disputes under ch. 720, F.S. An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.⁹¹

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.⁹²

⁸⁶ Section 718.1255(5), F.S.

⁸⁷ Section 718.1255(4)(a), F.S.

⁸⁸ Section 718.1255(4)(k), F.S.

⁸⁹ Section 718.1255(4)(a), F.S.

⁹⁰ Section 718.1255(2), F.S.

⁹¹ *Id.*

⁹² Section 720.311(2)(b), F.S.

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.⁹³

Post-Election Certification by Board Members

Within 90 days after being elected or appointed, a new board member for a condominium, cooperative, or homeowners' association must certify in writing to the secretary of the association that he or she:⁹⁴

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, cooperative proprietary lease,⁹⁵ homeowners' association's covenants, bylaws, and current written policies, as applicable;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.⁹⁶ The curriculum must be administered by a condominium education provider approved by the division.⁹⁷ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.⁹⁸ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.⁹⁹ The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.¹⁰⁰

⁹³ Section 718.112(2)(k) and 719.106(1)(l), F.S., relating to condominium and cooperative associations, respectively.

⁹⁴ Sections 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S., provide a post-election certification requirement for newly elected condominium, cooperative, and homeowners' association board members, respectively.

⁹⁵ A newly elected member of the board of a cooperative association must also certify that they have read the "proprietary lease," which is an instrument that gives a shareholder in a cooperative association the right to occupy a particular dwelling unit. See Bankrate, *What is a Proprietary Lease?*, available at: <https://www.bankrate.com/glossary/p/proprietary-lease/> (last visited Feb. 21, 2022).

⁹⁶ The division's Internet site provides a listing of approved educational providers for the certification of board members. See Department of Business and Professional Regulation, *Condominium & Cooperatives – Education*, at <http://www.myfloridalicense.com/dbpr/lsc/documents/ListofApprovedProviders.pdf> (last visited Feb. 21, 2022). This listing also includes training for Homeowners' Associations and some Mobile Home training.

⁹⁷ Sections 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Recommendations from Government and Private Sector Groups

In response to the tragic loss of 98 lives suffered in the collapse of Champlain Towers South, the following local governments and industry groups organized to review current law and to make recommendations to prevent another building collapse:

- Broward County Condominium Structural Issues Committee;¹⁰¹
- Miami-Dade County Commission;¹⁰²
- The Florida Building Commission’s Hurricane Research Advisory Committee;¹⁰³
- The Florida Bar Real Property, Probate, and Trust Law Section’s Condominium Law and Policy Life Safety Advisory Task Force;¹⁰⁴
- The Miami-Dade Grand Jury;¹⁰⁵ and
- The Community Associations Institute.¹⁰⁶

The findings and recommendations from these government and private sector groups are extensive, addressing a variety of issues. The recommendations from these diverse groups are too numerous to address in this analysis. However, these groups made recommendations that may differ in the specifics but are similar in certain respects, including making recommendations for a state-wide certification program for high-rise condominiums; limiting or prohibiting the waiving of reserves by condominium associations, and requiring condominium associations to conduct reserve studies.

III. Effect of Proposed Changes:

The bill amends provisions in chs. 718 and 719, F.S., to provide for the inspection and maintenance of condominium and cooperative buildings, the funding of necessary reserves for the maintenance and repair of such buildings, and other provisions to provide unit owners with better access to relevant information regarding building safety and their association’s funding of reserves.

¹⁰¹ Broward County Commission, *Summary Report and Recommendations of the Broward County Condominium Structural Issues Committee*, on file with the Regulated Industries Committee.

¹⁰² See Miami-Dade County, *Miami-Dade County convenes a series of discussion meetings with elected leaders to pursue policy reforms in wake of Surfside tragedy*, Aug. 4, 2021, <https://www.miamidade.gov/releases/2021-08-04-mayor-surfside-meetings.asp> (last visited Jan. 30, 2022).

¹⁰³ Florida Building Commission, Hurricane Research Advisory Committee, August 27, 2001, Agenda, available at: https://www.floridabuilding.org/fbc/commission/FBC_1021/HRAC/HRAC_Agenda.htm (last visited Jan. 30, 2022).

¹⁰⁴ The Florida Bar, *Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force*, Oct. 12, 2021, available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj78tuW_dn1AhX5hHIEHTUFAXUQFnoECBMQAQ&url=https%3A%2F%2Fwww-media.floridabar.org%2Fuploads%2F2021%2F10%2FCondominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf&usg=AOvVaw2YITYoD_3yZbtvU0eKfYm (last visited Jan. 30, 2022).

¹⁰⁵ Eleventh Judicial Circuit of Florida in and for the County of Miami-Dade, *Final Report of the Miami-Dade Grand Jury*, Dec. 15, 2021, available at: https://miamisao.com/wp-content/uploads/2021/12/GRAND-JURY_202112151434-1.pdf (last visited Jan. 30, 2022).

¹⁰⁶ Community Associations Institute, *Condominium Safety Public Policy Report*, Oct. 2021, available at: <https://www.caionline.org/HomeownerLeaders/DisasterResources/Documents/CAI-Condo-Safety-Public-Policy-Report-10-21.pdf> (last visited Jan. 30, 2022).

Inspection and Maintenance of Condominium and Cooperative Property

Mandatory Milestone Inspections

The bill creates s. 553.899, F.S., to require all multifamily residential buildings, including condominium and cooperative buildings, that are three stories or more in height to have a “milestone inspection” conducted by a licensed Florida architect or engineer.

The bill defines the term “milestone inspection: to mean:

a structural inspection of a building, including an inspection of load-bearing walls and primary structural members and primary structural systems, as defined in s. 627.706, F.S.,¹⁰⁷ by a licensed architect or engineer authorized to practice in this state for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.

Under the bill, the purpose of the milestone inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code (code) or the fire safety code.

The milestone inspection must to be conducted by December 31, 2024, if the building received a certificate of occupancy on or before July 1, 1992. Buildings that are subject to the inspection requirement must be inspected by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy was issued, and every 10 years thereafter.

However, if the building is located within 3 miles of a coastline, it must have a milestone inspection by December 31 of the year the building reaches 20 years of the age, based on the date the certificate of occupancy was issued, and every 7 years thereafter.

The owner of the building, or the condominium or cooperative association, as applicable, is responsible for all costs associated with the inspection.

The bill provides a two-phase milestone inspection process:

- A Phase One inspection is a visual inspection of the property. If no signs of structural distress are found by the visual inspection, the architect or engineer may issue an inspection report.
- A Phase Two inspection is required if the Phase One inspection identifies any structural distress. A Phase Two inspection may involve destructive and nondestructive testing at the description of the special inspector.

¹⁰⁷ Section 627.706, F.S., relating to sinkhole insurance, defines the term “primary structural member” to mean a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure,” and the term “primary structural system” to mean an assemblage of primary structural members.

The milestone inspection requirement does not apply to a two-family or three-family dwelling with three or fewer habitable stories above ground.

A milestone inspection must be conducted by a Florida-licensed architect or engineer who conducts the inspection to submit a sealed copy of the inspection report to the condominium's board of administration upon the completion of a phase one or phase two inspection. However, the inspector in charge of a phase two milestone inspection must be a licensed engineer or licensed architect with a minimum of five years' experience designing structural components and five years' experience inspecting existing buildings of similar size, scope, and type of construction.

The architect, engineer, or special inspector who performs the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the building owner, or if the building is a condominium or cooperative, to the condominium or cooperative association and to the building official of the local government that has jurisdiction.

The association must distribute a copy of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

The bill authorizes local governments to prescribe timelines and penalties with respect to compliance.

The bill directs the Florida Building Commission to establish "comprehensive structural and life safety standards for maintaining and inspecting all buildings and structures" in Florida that are three stories or more in height by December 31, 2022. These standards must be made available for local governments to adopt at their discretion.

The Developer Turnover Inspection Report

The bill amends s. 718.301(4)(p), F.S., which requires the developer to provide a turnover inspection report to the association when the nondeveloper unit owners are entitled to elect the majority of the board of administration,¹⁰⁸ to require that the turnover inspection report comply with the milestone inspection requirements in s. 553.899, F.S., notwithstanding the date of issuance of the certificate of occupancy or the height of the building.

The bill also amends s. 718.301(4)(p), F.S., which specifies the components of the common elements that must be included in the developer's turnover report, to:

- Include "waterproofing" among the building components that must be addressed in the turnover report; and
- Require the developer to attest to the condition of the listed components.

¹⁰⁸ See s. 718.301, F.S., specifying the events that entitle unit owners other than the developer to elect at least a majority of the members of the board of administration of an association.

For the condominium turnover report, the bill changes the term “common elements”¹⁰⁹ to the broader term “association property.”¹¹⁰

The bill creates s. 719.301(4)(p), F.S., to provide a developer turnover report requirement for the inspection of listed components that is identical to that required for condominiums under s. 718.301(4)(p), F.S., as amended by the bill.

Maintenance of Condominium Property

The bill amends s. 718.113, F.S., which provides that maintenance of the common elements is the responsibility of the condominium association and details the maintenance obligations for condominium boards, to provide that:

- The association shall provide for the maintenance, repair, and replacement of the applicable condominium property identified in s. 718.301(4)(p), F.S., except for any maintenance responsibility for limited common elements¹¹¹ assigned to the unit by the declaration;
- After turnover of control to the unit owners, the association must perform any required maintenance for which it bears responsibility identified by the developer in the turnover report until the association obtains new maintenance protocols from a licensed professional engineer or architect;
- Necessary maintenance, repair, or replacement of condominium property is not a material alteration or substantial addition to the common elements or to real property requiring unit owner approval; and
- The association is not liable for alternative housing costs, lost rent, or other expenses if a resident must vacate a unit or is denied access to a common element for necessary maintenance, repair, or replacement of condominium property.

The bill creates s. 719.105(5), F.S., to provide identical obligations for maintenance of the cooperative property by the cooperative association.

In addition, the bill provides that maintenance of cooperative property is the responsibility of the association, which is identical to the provision in current law in s. 718.113(1), F.S., for condominium associations.

Reserves

Reserve Studies

The bill amends the budget reserve provisions in ss. 718.112(2)(f) and 719.106(1)(j), F.S., to:

- Effective January 1, 2024, require condominium and cooperative associations with a residential building that is three stories or greater to conduct a reserve study at least once every three years;

¹⁰⁹ Section 718.103(8), F.S., defines the term “common elements” to mean “the portions of the condominium property not included in the units.”

¹¹⁰ Section 718.103(3), F.S., defines the term “association property” to mean “that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.”

¹¹¹ Section 718.103, F.S., defines “limited common elements” to mean those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

- Require associations to provide reserves for the building components listed in ss. 718.301(4)(q) and 719.301(4)(q), F.S., instead of reserves for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000;
- Provide for the content of the reserve study, including:
 - A summary of any inspection, including the milestone inspection under s. 553.899, F.S., and the findings and recommendations from such inspections;
 - Identification of the structural components of a building for which the reserves can be established and those for which reserves cannot be established because the useful life of the component cannot be determined;
 - An estimate of the useful life for those structural components for which a useful life may be estimated;
 - An estimate of applicable costs to maintain, repair, replace, or restore those common elements;
 - The total annual assessment that may be necessary to cover the cost to maintain, repair, replace, or restore those common elements; and
 - A schedule for the full funding of reserves.

Under the bill, a reserve account is fully funded when the actual or projected reserve balance in the reserve account is equal in direct proportion to the fraction of useful life for a given component or components multiplied by the current replacement costs for the component or components.

Under the bill, the board must annually review the results of the reserve study and to make any necessary adjustments.

The reserve study requirements in the bill do not apply to condominium and cooperative associations with a building under three stories.

The bill specifies budget requirements for associations, including a description of the funding plan and the procedures used for estimating reserves.

Funding Reserves

The bill creates a new ss. 718.103(1) and 719.103, F.S., applicable to condominium and cooperative associations, respectively, to define the term “alternative funding method” to mean:

... the funding of a reserve account by other than an assessment or special assessment which may reasonably be expected to fully satisfy the association’s reserve funding obligations, including, but not limited to, payments into the reserve account by a developer who is offering units, or any other method approved by the [Division of Florida Condominiums, Timeshares & Mobile Homes].

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to revise the requirements for the funding of reserves by condominium and cooperative associations, respectively, by:

- Permitting developers to satisfy their reserves funding obligations by using an alternative funding method; and
- Incorporating the findings and recommendations of the reserve study into the association's annual budget.

The bill amends s. 718.115(1)(a) and 719.107(1)(f), F.S., relating to the common expenses for condominium and cooperative associations, respectively, to provide that, notwithstanding any provision in the declaration requiring prohibiting or limiting a board of administration's authority to adopt a special assessment or to borrow money on behalf of the association, including any provision in the governing documents requiring unit owner voting or approval, the board may adopt a special assessment or borrow money for the necessary maintenance, repair, or replacement of the condominium or cooperative property identified in ss. 718.301(4)(p) and 719.301(4)(p), F.S, respectively.

Waiving Reserves

The bill maintains the current authority of members of condominium and cooperative associations to vote to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose. However, the use of reserves for a purpose other than authorized reserve expenditures is authorized without a vote of the membership in the exercise of the condominium and cooperative associations' emergency powers under ss. 718.1265 or 719.128, F.S., respectively.

The bill clarifies that the majority vote required to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose is a majority vote of all the voting interests.¹¹²

The bill also amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to revise the requirements for waiving of reserves by a developer. Before turnover, the bill permits a developer to waive reserves if:

- The reserves are funded consistent with the reserve study currently in effect; or
- An alternative funding mechanism for the association's reserve obligations is used.

Transparency - Access to Records and Disclosures

Official Records

The amends ss. 718.111(12)(a) and 719.104(2)(a), F.S., to include reserve studies, the milestone inspection report, and any other inspection report relating to a structural or life safety inspection to the list of documents that condominium and cooperative associations, respectively, must make available for inspection or copying by members of the association. The bill requires copies of

¹¹² Section 718.103(30), F.S., defines the term "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."

inspection reports to be maintained for 15 years. Under current law, official records must be maintained for seven years unless otherwise provided by general law.¹¹³

The bill also amends s. 718.111(12)(g), F.S., which requires an association of 150 or more units to make specified documents available on a website or through an application that can be downloaded on a mobile device, to include the inspection reports and reserve studies among the types of documents such association must maintain on the website or application.

The bill does not provide a comparable provision requiring cooperative associations to publish these records on the internet or through a mobile device. Under current law, ch. 719, F.S., does not require cooperative associations of any size to publish specified records on a website or through a mobile device.

Budget Disclosures

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to require that the budget for the condominium and cooperative associations, respectively, must include a disclosure statement in conspicuous type regarding the status of reserves.

If the association has voted to waive reserves or to use existing reserve funds for purposes other than purposes for which the reserves were intended, the budget of the association must include the statement to note that event and to provide notice that the waiving or reserves or the use of reserves may result in unit owner liability for payment of unanticipated special assessments.

On or after January 1, 2026, if the association is required to perform a reserve study and the budget of the association does not fund reserves consistent with the reserve study, the budget of the association must include a statement noting the date of the last reserve study and that the reserve amount is less than required by the reserve study schedule.

Developer Turnover

The bill amends ss. 718.301(4) and 719.301(4), F.S., to require developers of condominium or cooperatives to provide the association a copy of the following when the non-developer unit owners assume control of the association:

- A copy of the inspector-prepared summary of the milestone inspection; and
- A copy of the most recent reserve study, along with the budget statements regarding the status required under ss. 718.112(2)(f) and 719.106(1)(j), F.S., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

The bill also amends s. 719.301(4), F.S., to require developers of a cooperative to provide the association identical documents or statements regarding reserves studies and the status of reserves to those required for developers of condominiums at the turnover of control to the nondeveloper unit owners.

¹¹³ Sections 718.111(12)(b) and 719.104(2)(b), F.S.

Additional Pre-Sale Disclosures

The bill amends ss. 718.503 and 719.503, F.S., for condominium and cooperative associations, respectively, which requires certain documents to be provided to prospective buyers of a unit before closing, and ss. 718.504 and 719.504, F.S., which requires specified disclosures in the prospectus or offering circular that must be provided to prospective purchasers of a condominium or cooperative unit, respectively, to require that the following documents or information be provided to prospective buyers of a unit with a copy of:

- A copy of the most recent reserve study along with the budget statements regarding the status required under ss. 718.112(2)(f) and 719.106(1)(j), F.S., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable; and
- The inspector-prepared summary of the milestone inspection report.

Homeowner Remedies:

The bill amends the definition for the term “dispute” in s. 718.1255(1), F.S., to include a disagreement between two or more parties that involves the failure of a governing body, when required by ch. 718, F.S., or an association document, to:

- Perform a structural or life safety inspection, including the milestone inspection.
- Perform a reserve study.
- Fund reserves.
- Make or provide necessary maintenance or repairs of association property.

Under the bill, such disputes must be mediated under s. 720.311, F.S., and are not subject to non-binding arbitration by the division.

The bill also republishes s. 719.1255, F.S., which applies the alternative dispute resolution provisions for condominium disputes to cooperative disputes to incorporate the amendment to s. 718.1255, F.S.

Post-Election Certification by Board Members

The bill amends ss. 718.112(2)(d)4.b. and 719.106(1)(d)b., to revise the post-election certification requirements for condominium and cooperative association board members. Under the bill, a board member for these associations must certify by affidavit that he or she has read the declaration of condominium, articles of incorporation, and cooperative proprietary lease, as applicable, and complete a division-approved education curriculum within one year before, or 90 days after, his or her election or appointment.

Conforming Cross-references

The bill amends ss. 558.002, 718.116, 718.121, 718.706, and 720.3085, F.S., to conform cross-references.

Effective Date

The bill takes effect July 1, 2022.

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:

Under the bill, condominium and cooperative associations and unit owners in those communities may incur additional expenses related to the required conduct of a milestone inspection and reserve study. However, the associations and unit owners may benefit from the long-term financial planning benefits of a reserve study and from the maintenance or repair of association property.

According to the Florida Building Commission comments in the analysis for SB 1702, the recertification and building safety inspections currently being conducted in Miami-Dade and Broward counties can cost as much as \$20,000 to \$40,000 for the inspection of a 15 to 20 story condominium, and between \$2,000 and \$4,000 for the inspection of a small commercial building. Any remedial work to remedy issues identified during the inspection would be in addition to these costs.¹¹⁴

Providers of reserve studies and architects and engineers who offer milestone inspections may benefit from additional business due to the required milestone inspections and reserve studies.

¹¹⁴ See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 1702* at p. 7 (Jan. 7, 2022) (on file with the Senate Regulated Industries Committee).

C. Government Sector Impact:

The DBPR has not provided a fiscal impact for PCS/CS/SB 1702 (703878). However, the department has provided fiscal impact analysis for SB 7042, which provides similar requirements for the inspection of condominium and cooperative building, the maintenance of building components, and the funding of reserves. For SB 7042, the DBPR estimates a negative fiscal impact of \$1,221,912 for Fiscal Year 2022-2023, \$1,164,771 for Fiscal Year 2023-2024 and Fiscal Year 2024-2025. The estimated fiscal impact is due to anticipated additional complaints related to the expansion of the types of building components for which reserves must be maintained.¹¹⁵ The bill requires associations to maintain reserves for the building components listed in ss. 718.301(4)(p) and 719.301(4)(p), F.S., instead of reserves for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.

The division's Long Range Financial Plan requires it to complete investigations within 90 days. Consequently, by requiring more building components to be funded, the division anticipates more extensive reviews will be required within the 90-day investigation period.

The division also anticipates the need to contract for services with outside professional to assist in determining requests to approve alternative funding methods, and to contract with engineers and architects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Fannie Mae¹¹⁶ and the Federal Housing Administration¹¹⁷ have altered their requirements for loans secured by condominium and cooperatives in response to the Champlain Towers collapse, including requiring:

- The association to have assessments sufficient to fund any repairs; and
- That at least 10 percent of the association's assessments are dedicated to budget reserves.

Fannie Mae also provides that condominium and cooperatives with significant deferred maintenance or that have received a directive from a regulatory authority or inspection agency to make repairs due to unsafe conditions are not eligible for purchase until the repairs are made.¹¹⁸

¹¹⁵ See Department of Business and Professional Regulation, *2022 Session Fiscal Impact Form, Feb. 17, 2022*. (on file with the Senate Committee on Rules).

¹¹⁶ Fannie Mae, Lender Letter (LL-20221-14), Oct. 12, 2021, available at: <https://singlefamily.fanniemae.com/media/29411/display> (last visited Jan. 30, 2022).

¹¹⁷ Freddie Mac, *Handbook 4000.1, FHA Single Family Housing Policy Handbook, Condominium Project Approval*, sec. II.C.2.vi., p. 530 available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsg-102021.pdf> (last visited Jan. 30, 2022).

¹¹⁸ *Supra* n. 116.

Although the underwriting standard was adopted before the Champlain Towers South collapse, Freddie Mac also requires that at least 10 percent of a condominium association's assessments are dedicated to budget reserves.¹¹⁹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 558.002, 718.121, 718.103, 718.111, 718.112, 718.113, 718.115, 718.1255, 718.301, 718.503, 718.504, 718.706, 719.103, 719.104, 719.106, 719.107, 719.108, 719.1255, 719.301, 719.503, 719.504, and 720.3085.

This bill creates section 553.899 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.)

PCS/CS/SB 1702 (703878) by Rules on February 23, 2022:

PCS/CS/SB 1702 (703878) changes to the title of the bill from and act relating to mandatory building inspections to an act relating to building safety. The PCS/CS/SB 1702 (703878) differs from CS/SB 1702 as follows.

Regarding the mandatory milestone inspection requirements in s. 553.899, F.S., PCS/CS/SB 1702 (703878):

- Changes the inspection requirement from building more than 3 stories in height to building three stories or more in height;
- Clarifies that a milestone inspection is not a firesafety inspection;
- Requires associations to deliver an inspector-prepared summary (instead of the full inspection report) to unit owners by mail or personal delivery, and requires posting the summary in a conspicuous place, and requires posting of the full report and summary on the association website, if required to maintain a website;
- Revises the inspection requirement to not require the inspection of all habitable and uninhabitable areas to instead require the inspection of habitable areas; and
- Requires the Florida Building Commission to develop comprehensive structural and life safety standards for maintaining and inspecting buildings and structures in this state that are three stories or more in height instead of requiring the development of standards for all building types and structures.

Regarding condominium and cooperative associations under chs. 718 and 719, F.S., respectively, The PCS/CS/SB 1702 (703878) also:

- Amends ss. 718.111(12) and 719.104(2), F.S., to requires associations to maintain, as official records, copies of the milestone inspection report and other inspection reports

¹¹⁹ Freddie Mac, Established Condominium Projects, April 3, 2021, available at: <https://guide.freddiemac.com/app/guide/section/5701.5> (last visited Jan. 30, 2022).

- relating to a structural or life safety inspection for 15 years, and copies of reserve studies and reserve funding plans;
- Amends ss. 718.103 and 719.103, F.S., to define the term “alternative funding method;”
 - Amends s. 719.104, F.S., to revise the maintenance obligations for cooperative associations;
 - Amends ss. 718.112 and 719.106, F.S., to revise the requirements for association budgets, including requirements for reserve studies, the waiving of reserves, the funding of reserves, and budget notices;
 - Amends ss. 718.112(2)(d)4.b. and 719.106(1)(d)b., F.S., to revise the post-election certification for condominium and cooperative association board members;
 - Amends s. 718.113, F.S., to revise the maintenance obligations for condominium associations;
 - Amends ss. 718.115 and 719.107, F.S., to authorize associations to adopt a special assessment or borrow money without owner approval for the necessary repair, maintenance, or replacement of condominium or cooperative property;
 - Amends s. 718.1255, F.S., to include disputes related to reserve studies, reserves, and inspections in the presuit mediation requirements for condominium associations;
 - Reenacts s. 719.1255, F.S., relating to alternative dispute resolution, to incorporate the amendment made to s. 718.1255, F.S.;
 - Amends ss. 718.301 and 719.301, F.S., to revise the requirements for the records a developer must provide to the association at turnover of control to the nondeveloper unit owners;
 - Amends ss. 718.503 and 719.503, F.S., to delete notices acknowledging receipt of the milestone inspection report in the bill, and to instead require the unit owner to deliver to a prospective buyer or lessee a statement regarding the status of reserve funding in the budget, a copy of the most recent reserve study, and the milestone inspection report summary, if applicable;
 - Amends ss. 719.504 and 719.504, F.S., to revise the requirements for prospectuses and offering circulars; and
 - Amends ss. 558.002, 718.116, 718.121, 718.706, and 720.3085, F.S., to conform cross-references.

CS by Regulated Industries on February 1, 2022:

The committee substitute requires that the inspector in charge of a phase two milestone inspection must be a licensed engineer or licensed architect with a minimum of five years’ experience designing structural components and five years’ experience inspecting existing buildings of similar size, scope, and type of construction.

B. Amendments:

None.