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LEGISLATIVE ACTION

Senate

House

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Floor: WD

04/10/2023 03:42 PM

Senator Pizzo moved the following:

1 **Senate Substitute for Amendment (315026) (with directory**
2 **and title amendments)**

3
4 Delete lines 518 - 710

5 and insert:

6 (16) INVESTMENT OF ASSOCIATION FUNDS.-

7 (a) A board, in fulfilling its duty to manage operating and
8 reserve funds of an association, must use best efforts to make
9 prudent investment decisions that carefully consider risk and
10 return in an effort to maximize returns on invested funds.

11 (b) An association, including a multicondominium



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12 association, may invest reserve funds in one or any combination
13 of depository accounts at a community bank, savings bank,
14 commercial bank, savings and loan association, or credit union
15 if the respective account balance at any institution does not
16 exceed the amount of deposit insurance per account provided by
17 any agency of the Federal Government or as otherwise available.
18 Notwithstanding any declaration, only funds identified as
19 reserve funds may be invested pursuant to this subsection.

20 (c) The board shall create an investment committee composed
21 of at least two board members and two unit owners. The board
22 shall also adopt rules for invested funds, including, but not
23 limited to, rules requiring periodic reviews of any investment
24 manager's performance, the development of an investment policy
25 statement, and that all meetings of the investment committee be
26 recorded and made part of the official records of the
27 association. The investment policy statement developed pursuant
28 to this paragraph must, at a minimum, address risk, liquidity,
29 and benchmark measurements; authorized classes of investments;
30 authorized investment mixes; limitations on authority relating
31 to investment transactions; requirements for cash or cash
32 equivalents for projected reserve expenditures within, at
33 minimum, the next 24 months; projected expenditures relating to
34 an inspection performed pursuant to s. 553.899; and proxy
35 response protocols.

36 (d) The investment committee shall recommend investment
37 advisers to the board, and the board shall select one of the
38 recommended investment advisers to provide services to the
39 association. Such investment advisers must be registered or have
40 notice filed under s. 517.12. The investment adviser and any



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41 representative or association of the investment adviser may not
42 be related by affinity or consanguinity to, or under common
43 ownership with, any board member, community management company,
44 reserve study provider, or unit owner. The investment adviser
45 shall comply with the prudent investor rule in s. 518.11. The
46 investment adviser shall act as a fiduciary to the association
47 in compliance with the standards set forth in the Employee
48 Retirement Income Security Act of 1974 at 29 U.S.C. s.
49 1104(a)(1)(A)-(C). In case of conflict with other provisions of
50 law authorizing investments, the investment and fiduciary
51 standards set forth in this paragraph must prevail. If at any
52 time the investment committee determines that an investment
53 adviser does not meet the requirements of this section, the
54 investment committee must recommend a replacement investment
55 adviser to the board.

56 (e) At least once each calendar year, or sooner if a
57 substantial financial obligation of the association becomes
58 known to the board, the association must provide the investment
59 adviser with the association's investment policy statement, the
60 most recent reserve study report, the association's structural
61 integrity report, and the financial reports prepared pursuant to
62 subsection (13). If there is no recent reserve study report, the
63 association must provide the investment adviser with a good
64 faith estimate disclosing the annual amount of reserve funds
65 necessary for the association to fully fund reserves for the
66 life of each reserve component and each component's
67 redundancies. The investment adviser shall annually review these
68 documents and provide the association with a portfolio
69 allocation model that is suitably structured and prudently



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70 designed to match projected annual reserve fund requirements and
71 liability, assets, and liquidity requirements. The investment
72 adviser shall prepare a funding projection for each reserve
73 component, including any of the component's redundancies. There
74 must be a minimum of 36 months of projected reserves in cash or
75 cash equivalents available to the association at all times.

76 (f) Portfolios managed by the investment adviser may
77 contain any type of investment necessary to meet the objectives
78 in the investment policy statement; however, portfolios may not
79 contain stocks, securities, or other obligations that the State
80 Board of Administration is prohibited from investing in under
81 ss. 215.471, 215.4725, and 215.473 or that state agencies are
82 prohibited from investing in under s. 215.472, as determined by
83 the investment adviser. Any funds invested by the investment
84 adviser must be held in third-party custodial accounts that are
85 subject to insurance coverage by the Securities Investor
86 Protection Corporation in an amount equal to or greater than the
87 invested amount. The investment adviser may withdraw investment
88 fees, expenses, and commissions from invested funds.

89 (g) The investment adviser shall:

90 1. Annually provide the association with a written
91 certification of compliance with this section and a list of
92 stocks, securities, and other obligations that are prohibited
93 from being in association portfolios under paragraph (f); and

94 2. Submit monthly, quarterly, and annual reports to the
95 association which are prepared in accordance with established
96 financial industry standards and in accordance with chapter 517.

97 (h) Any principal, earnings, or interest managed under this
98 subsection must be available at no cost or charge to the



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99 association within 15 business days after delivery of the
100 association's written or electronic request.

101 (i) Unallocated income earned on reserve fund investments
102 may only be spent on capital expenditures, deferred maintenance,
103 structural repairs, or other items for which the reserve
104 accounts have been established. Any surplus of funds which
105 exceeds the amount required to maintain fully funded reserves
106 must be managed pursuant to s. 718.115.

107 Section 6. Paragraphs (f), (g), and (h) of subsection (2)
108 of section 718.112, Florida Statutes, are amended to read:

109 718.112 Bylaws.—

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

113 (f) *Annual budget.*—

114 1. The proposed annual budget of estimated revenues and
115 expenses must be detailed and must show the amounts budgeted by
116 accounts and expense classifications, including, at a minimum,
117 any applicable expenses listed in s. 718.504(21). The board
118 shall adopt the annual budget at least 14 days before the start
119 of the association's fiscal year. In the event that the board
120 fails to timely adopt the annual budget a second time, it is
121 deemed a minor violation and the prior year's budget shall
122 continue in effect until a new budget is adopted. A

123 multicondominium association must adopt a separate budget of
124 common expenses for each condominium the association operates
125 and must adopt a separate budget of common expenses for the
126 association. In addition, if the association maintains limited
127 common elements with the cost to be shared only by those



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128 entitled to use the limited common elements as provided for in
129 s. 718.113(1), the budget or a schedule attached to it must show
130 the amount budgeted for this maintenance. If, after turnover of
131 control of the association to the unit owners, any of the
132 expenses listed in s. 718.504(21) are not applicable, they do
133 not need to be listed.

134 2.a. In addition to annual operating expenses, the budget
135 must include reserve accounts for capital expenditures and
136 deferred maintenance. These accounts must include, but are not
137 limited to, roof replacement, building painting, and pavement
138 resurfacing, regardless of the amount of deferred maintenance
139 expense or replacement cost, and any other item that has a
140 deferred maintenance expense or replacement cost that exceeds
141 \$10,000. ~~The amount to be reserved for an item is determined by~~
142 ~~the association's most recent structural integrity reserve study~~
143 ~~that must be completed by December 31, 2024. If the amount to be~~
144 ~~reserved for an item is not in the association's initial or most~~
145 ~~recent structural integrity reserve study or the association has~~
146 ~~not completed a structural integrity reserve study, the amount~~
147 must be computed using a formula based upon estimated remaining
148 useful life and estimated replacement cost or deferred
149 maintenance expense of the reserve item. In a budget adopted by
150 an association that is required to obtain a structural integrity
151 reserve study, reserves must be maintained for the items
152 identified in paragraph (g) and the reserve amount for such
153 items must be based on the findings and recommendations of the
154 association's most recent structural integrity reserve study.
155 With respect to items for which an estimate of useful life is
156 not readily ascertainable, an association must reserve the



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157 amount of deferred maintenance expense, if any, which is
158 recommended by the structural integrity reserve study for such
159 items. The association may adjust replacement reserve
160 assessments annually to take into account an inflation
161 adjustment and any changes in estimates or extension of the
162 useful life of a reserve item caused by deferred maintenance.
163 The members of a unit-owner-controlled association may
164 determine, by a majority vote of the total voting interests of
165 the association ~~at a duly called meeting of the association,~~ to
166 provide no reserves or less reserves than required by this
167 subsection. For a budget adopted on or after ~~Effective~~ December
168 31, 2024, the members of a unit-owner-controlled association
169 that must obtain a structural integrity reserve study may not
170 determine to provide no reserves or less reserves than required
171 by this subsection for items listed in paragraph (g), except
172 that members of an association operating a multicondominium may
173 determine to provide no reserves or less reserves than required
174 by this subsection if an alternative funding method has been
175 approved by the division.

176 b. Before turnover of control of an association by a
177 developer to unit owners other than a developer under s.
178 718.301, the developer-controlled association may not vote to
179 waive the reserves or reduce funding of the reserves. If a
180 meeting of the unit owners has been called to determine whether
181 to waive or reduce the funding of reserves and no such result is
182 achieved or a quorum is not attained, the reserves included in
183 the budget shall go into effect. After the turnover, the
184 developer may vote its voting interest to waive or reduce the
185 funding of reserves or approve contingent special assessments



186 and lines of credit as provided in sub-subparagraph c.

187 c.(I) In lieu of the reserve accounts required by this
188 subparagraph, members of a unit-owner-controlled association may
189 approve contingent special assessments against each unit to
190 secure a line of credit for the association to provide available
191 funding for deferred maintenance and replacement costs as
192 needed. The line of credit and the contingent special
193 assessments must be approved by a majority of the voting
194 interests of the association. Upon approval by the members of
195 the association and once a line of credit has been approved and
196 made available to the board for the funding of the required
197 deferred maintenance and replacement costs, the association must
198 record a declaration of special assessments evidencing the levy
199 of such special assessments in the public records.

200 (II) Funding from the line of credit must be immediately
201 available for access by the board to fund maintenance and
202 replacement costs that come due, without further approval by the
203 members of the association. At the option of a unit owner, the
204 special assessment may be paid in full at the time it becomes
205 due or the payment may be amortized over a term of years as
206 provided for by the line of credit. However, a unit owner must
207 be able to pay the remaining balance of the special assessment
208 at any time during the amortization period.

209 3. Reserve funds and any interest accruing thereon shall
210 remain in the reserve account or accounts, and may be used only
211 for authorized reserve expenditures unless their use for other
212 purposes is approved in advance by a majority vote of all the
213 total voting interests at a duly called meeting of the
214 association. Before turnover of control of an association by a



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215 developer to unit owners other than the developer pursuant to s.
216 718.301, the developer-controlled association may not vote to
217 use reserves for purposes other than those for which they were
218 intended. For a budget adopted on or after ~~Effective~~ December
219 31, 2024, members of a unit-owner-controlled association that
220 must obtain a structural integrity reserve study may not vote to
221 use reserve funds, or any interest accruing thereon, ~~that are~~
222 ~~reserved for items listed in paragraph (g)~~ for any other purpose
223 other than the replacement or deferred maintenance costs of the
224 components listed in paragraph (g) ~~their intended purpose.~~

225 4. The only voting interests that are eligible to vote on
226 questions that involve waiving or reducing the funding of
227 reserves, or using existing reserve funds for purposes other
228 than purposes for which the reserves were intended, are the
229 voting interests of the units subject to assessment to fund the
230 reserves in question. Proxy questions relating to waiving or
231 reducing the funding of reserves or using existing reserve funds
232 for purposes other than purposes for which the reserves were
233 intended must contain the following statement in capitalized,
234 bold letters in a font size larger than any other used on the
235 face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN
236 PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY
237 RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED
238 SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

239 (g) *Structural integrity reserve study.*—

240 1. A residential condominium ~~An~~ association must have a
241 structural integrity reserve study completed at least every 10
242 years after the condominium's creation for each building on the
243 condominium property that is three stories or higher in height



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244 as determined by the Florida Building Code which includes, at a
245 minimum, a study of the following items as related to the
246 structural integrity and safety of the building:

- 247 a. Roof.
248 b. Load-bearing walls or other primary structural members.
249 c. ~~Floor.~~
250 ~~d.~~ Foundation.
251 ~~d.e.~~ Fireproofing and fire protection systems.
252 ~~e.f.~~ Plumbing.
253 ~~f.g.~~ Electrical systems.
254 ~~g.h.~~ Waterproofing and exterior painting.
255 ~~h.i.~~ Windows and exterior doors.
256 ~~i.j.~~ Any other item that has a deferred maintenance expense
257 or replacement cost that exceeds \$10,000 and the failure to
258 replace or maintain such item negatively affects the items
259 listed in sub-subparagraphs a.-h. ~~sub-subparagraphs a.-i.~~, as
260 determined by the ~~licensed engineer or architect performing the~~
261 visual inspection portion of the structural integrity reserve
262 study.

263 2. A structural integrity reserve study is based on a
264 visual inspection of the condominium property. A structural
265 integrity reserve study may be performed by any person qualified
266 to perform such study. However, the visual inspection portion of
267 the structural integrity reserve study must be performed or
268 verified by an engineer licensed under chapter 471, an architect
269 licensed under chapter 481, or a person who is certified as a
270 reserve specialist or professional reserve analyst by the
271 Community Associations Institute or the Association of
272 Professional Reserve Analysts.



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273 3. At a minimum, a structural integrity reserve study must
274 identify each item of the condominium property being visually
275 inspected, state the estimated remaining useful life and the
276 estimated replacement cost or deferred maintenance expense of
277 each item of the condominium property being visually inspected,
278 and provide a reserve funding schedule with a recommended annual
279 reserve amount that achieves the estimated replacement cost or
280 deferred maintenance expense of each item of condominium
281 property being visually inspected by the end of the estimated
282 remaining useful life of the item. The structural integrity
283 reserve study may recommend that reserves do not need to be
284 maintained for any item for which an estimate of useful life and
285 an estimate of replacement cost or deferred maintenance expense
286 cannot be determined, or the study may recommend a deferred
287 maintenance expense amount for such item.

288 4. This paragraph does not apply to buildings less than
289 three stories in height; single-family, two-family, or three-
290 family dwellings with three or fewer habitable stories above
291 ground; any portion or component of a building that has not been
292 submitted to the condominium form of ownership; or any portion
293 or component of a building that is maintained by a party other
294 than the association.

295 5. Before a developer turns over control of an association
296 to unit owners other than the developer, the developer must have
297 a structural integrity reserve study completed for each building
298 on the condominium property that is three stories or higher in
299 height.

300 ~~6.3.~~ Associations existing on or before July 1, 2022, which
301 are controlled by unit owners other than the developer, must



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302 have a structural integrity reserve study completed by December
303 31, 2024, for each building on the condominium property that is
304 three stories or higher in height. An association that is
305 required to complete a milestone inspection in accordance with
306 s. 553.899 on or before December 31, 2026, may complete the
307 structural integrity reserve study simultaneously with the
308 milestone inspection. In no event may the structural integrity
309 reserve study be completed after December 31, 2026.

310 7. If the milestone inspection required by s. 553.899, or
311 an inspection completed for a similar local requirement, was
312 performed within the past 5 years and meets the requirements of
313 this paragraph, such inspection may be used in place of the
314 visual inspection portion of the structural integrity reserve
315 study.

316 8.4. If an association fails to complete a structural
317 integrity reserve study pursuant to this paragraph, such failure
318 is a breach of an officer's and director's fiduciary
319 relationship to the unit owners under s. 718.111(1).

320 (h) *Mandatory milestone inspections.*—If an association is
321 required to have a milestone inspection performed pursuant to s.
322 553.899, the association must arrange for the milestone
323 inspection to be performed and is responsible for ensuring
324 compliance with the requirements of s. 553.899. The association
325 is responsible for all costs associated with the milestone
326 inspection attributable to the portions of the building which
327 the association is responsible for maintaining under the
328 governing documents of the association. If the officers or
329 directors of an association willfully and knowingly fail to have
330 a milestone inspection performed pursuant to s. 553.899, such



331 failure is a breach of the officers' and directors' fiduciary
332 relationship to the unit owners under s. 718.111(1)(a). Within
333 14 days after receipt of a written notice from the local
334 enforcement agency that a milestone inspection is required, the
335 association must notify the unit owners of the required
336 milestone inspection and provide the date by which the milestone
337 inspection must be completed. Such notice may be given by
338 electronic submission to unit owners who consent to receive
339 notice by electronic submission or by posting on the
340 association's website. Within 45 days after receiving ~~Upon~~
341 ~~completion of a phase one or phase~~

342
343 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

344 And the directory clause is amended as follows:

345 Delete line 413

346 and insert:

347 718.111, Florida Statutes, is amended, and subsection (16) is
348 added to that section, to read:

349
350 ===== T I T L E A M E N D M E N T =====

351 And the title is amended as follows:

352 Delete lines 43 - 50

353 and insert:

354 study"; amending s. 718.111, F.S.; requiring
355 association boards to use best efforts to make prudent
356 investment decisions; authorizing associations to
357 invest funds in specified investment products;
358 requiring authorizing boards to create an investment
359 committee and adopt specified rules; requiring



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360 investment committees to recommend investment advisers
361 to their boards; requiring the board to select one of
362 the recommended investment advisers; providing
363 qualifications for investment advisers; requiring
364 investment committees to recommend a replacement
365 investment adviser under certain circumstances;
366 requiring associations to provide their investment
367 adviser with certain documents at least annually;
368 requiring investment advisers to annually review such
369 documents and provide the association with a portfolio
370 allocation model that meets specified requirements;
371 requiring investment advisers to prepare funding
372 projections; requiring that a specified amount of
373 projected reserves as cash or cash equivalents be
374 available to associations; providing that portfolios
375 may not contain certain investments; requiring that
376 certain funds be held in specified accounts; requiring
377 the investment adviser to annually provide to the
378 association a certain certification and list and to
379 periodically submit certain reports; requiring that
380 certain funds be made available to associations within
381 a certain timeframe after they submit a written or
382 electronic request; specifying that unallocated income
383 earned on reserve fund investments may only be spent
384 in a specified manner; requiring certain surplus funds
385 to be managed in a specified manner; making technical
386 changes; amending s. 718.112, F.S.; revising
387 condominium association reserve account requirements;
388 revising requirements relating to waiving reserve



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389 requirements or providing less reserves than required
390 by law; revising requirements relating to using
391 reserve funds or interest accrued on reserve funds for
392 certain purposes; authorizing association members to
393 approve certain special assessments and lines of
394 credit for specified purposes; providing requirements
395 for such special assessments and lines of credit;
396 revising requirements for structural