

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 Regulated Industries

BILL: CS/SB 154

INTRODUCER: Regulated Industries Committee and Senator Bradley

SUBJECT: Condominium and Cooperative Associations

DATE: February 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 154 revises the milestone inspection requirements for condominium and cooperative buildings that are three or more stories in height to:

- Limit the milestone inspection requirements to buildings that include a residential condominium or cooperative;
- Provide that the milestone inspection requirements apply to buildings that in whole or in part are subject to the condominium or cooperative forms of ownership, such as mixed-use buildings;
- Clarify that all owners of a mixed-use building in which portions of the building are subject to the condominium or cooperative form of ownership are responsible for ensuring compliance and must share the costs of the inspection;
- Delete the 25-year milestone inspection requirements for buildings that are within three miles of the coastline;
- Authorize the local enforcement agencies that are responsible with enforcing the milestone inspection requirements the option to set a 25-year inspection requirement if justified by local environmental conditions, including proximity to seawater;
- Authorize the local enforcement agency to extend the inspection deadline for a building upon a petition showing good cause that the owner or owners of the building have entered into a contract with an architect or engineer to perform the milestone inspection services and the milestone inspection cannot reasonably be completed before the deadline; and
- Provide that the inspection services may be provided by a team of design professionals with an architect or engineer acting as a registered design professional in responsible charge;

- Clarify that an association must distribute a copy of the summary of the inspection reports to unit owners within 30 days of its receipt.

The bill requires the Florida Building Commission to establish by rule a building safety program to implement the milestone inspection requirements within the Florida Building Code. The commission must specify the minimum requirements for the commission's building safety program by December 31, 2024, including inspection criteria, testing protocols, standardized inspection and reporting forms that are adaptable to an electronic format, and record maintenance requirements for the local authority having jurisdiction.

The bill revises the requirement that all personal lines residential policies issued by the Citizens Property Insurance Corporation must include flood coverage to exempt condominium or cooperative units that are in certain flood-risk areas and above specified floors in a building.

The bill clarifies that both the condominium or cooperative unit owner and any person authorized by any owner as his or her representative may inspect the official records of the association.

The bill revises the reserve funding requirements relating to condominium and cooperative associations to:

- Require associations that are subject to the structural integrity reserve study (SIRS) requirement to base a budget adopted on or after January 1, 2025, on the findings and recommendations of the association's most recent SIRS;
- Permit associations that are not subject to the SIRS requirement to waive reserves if approved by a majority vote of all voting interests;
- Permit multicondominium associations to waive reserves if an alternative funding method has been approved by the division; and
- Provide that reserve assessments may be adjusted for inflation.

The bill amends the SIRS requirements to:

- Limit the SIRS requirement to residential condominiums and cooperatives;
- Clarify that the SIRS recommendation must include a reserve funding schedule;
- Delete "floor" from the list of building components that must be visually inspected in the SIRS;
- Permit the visual inspection portion of the SIRS to be verified by an engineer or architect;
- Permit persons who have been certified as a Reserve Specialist, or Professional Reserve Analyst by the Community Associations Institute or the Association of Professional Reserve Analysts to perform or verify the visual inspection portion of the SIRS;
- Exempt from the SIRS requirement:
 - Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; and
 - Any portion or component of a building that has not been submitted to the condominium or cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the condominium or cooperative association.

Effective July 1, 2027, the bill permits condominium and cooperative unit owners to use the mediation process in this section for specified disputes related to compliance with the milestone inspection or SIRS requirements.

The bill provides additional presale notice requirements in contracts for sales of a unit by a developer or nondeveloper. This provision is similar to current contract notices to unit owners obligated to furnish certain governing documents to the prospective buyer of a unit more than three days before closing for sales by a nondeveloper or 15 days before closing for sales by a developer. A contract that does not conform to these notice requirements is voidable at the option of the purchaser prior to closing.

Except for the dispute resolution provisions that take effect on July 1, 2027, the bill takes effect upon becoming law.

II. Present Situation:

Building Safety

SB 4-D (Special Session D 2022)

During the Special Session D, 2022, SB 4-D¹ by Senator Boyd was enacted to revise the laws related to building safety. The act required the Florida Building Code to provide that when 25 percent or more of a roofing system or roof section is being repaired, replaced, or recovered, only the portion of the roofing system or roof section undergoing such work need be constructed in accordance with the current Florida Building Code in effect at the time of such work.

The act also provided building safety inspection requirements for condominium and cooperative association buildings, increased the rights of unit owners and prospective unit owners to access information regarding the condition of such buildings, and revised the requirements for associations to fund reserves for the continued maintenance and repair of such buildings.

Regarding safety inspections for a building, the act:

- Required a condominium or cooperative association building that is three or more stories in height to have a “milestone inspection” of the building’s structural integrity by an architect or engineer when a building reaches:
 - 30 years of age and every 10 years thereafter, or
 - 25 years of age and every 10 years thereafter if the building is located within three miles of a coastline.
- Exempted single-family, two-family, and three-family dwellings with three or fewer habitable stories above ground from the milestone inspection requirement.
- Required the building’s initial milestone inspection to be performed before December 31, 2024, if a milestone inspection is required and the building’s certificate of occupancy was issued on or before July 1, 1992.
- Required that a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency.

¹ Chapter 2022-269, Laws of Fla.

- Required a phase two milestone inspection if there is evidence of “substantial structural deterioration” as determined by a phase one inspection.
- Specified the minimum contents of a milestone inspection report.
- Required inspection report results to be provided to local building officials and the affected association, and required an inspector-prepared summary to be provided to unit owners by mail and by email to unit owners who have consented to receive notices by email.
- Required that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) or CAM firm must require compliance with those requirements as directed by the board.
- Required the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.
- Required the Florida Building Commission to make recommendations to the Governor and Legislature regarding the inspection requirements in the bill and inspection for other types of buildings and structures that are three stories or higher.
- Provided that a willful and knowing failure by an officer or director of an association to have a milestone inspection performed is a breach of the officer’s and director’s fiduciary relationship to the unit owners.
- Required the developer’s turnover inspection report to comply with the milestone inspection requirements.
- Required associations to report to the Florida Division of Condominiums, Timeshares, and Mobile Homes (division) on or before January 1, 2023, the number of buildings that are three stories or higher in height and the total number of units in such buildings and required the division to publish that information on its website.
- Required developer and non-developer unit owners to give prospective buyers of a unit a copy of the inspector-prepared summary of the milestone inspection report.
- Extended the jurisdiction of the division to investigate complaints to include complaints related to the procedural completion of milestone inspections.

SB 4-D also revised the reserve funding requirements for condominium and cooperative associations.²

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.³

In 1992, Hurricane Andrew demonstrated that Florida’s system of local codes did not work. Hurricane Andrew destroyed many structures that were allegedly built according to the strongest

² (See *infra* Budgets and Reserves, Condominium and Cooperative Associations).

³ 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 February 15, 2023).

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, 2002.⁴ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.⁵

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.⁶

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.⁷ The commission reviews several International Codes published by the International Code Council,⁸ 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.⁹

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.¹⁰ Every local government must enforce the Building Code and issue building permits.¹¹ 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.¹²

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.¹³ Construction work may not be done

⁴ *Id.*; see also DBPR, *Building Code Information System*, at: <https://floridabuilding.org/c/default.aspx#> (last visited Feb. 16, 2023).

⁵ *Id.*

⁶ Section 553.72(1), F.S.

⁷ Section 553.74, F.S.

⁸ 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. 16, 2023).

⁹ Section 553.73(7), F.S.

¹⁰ Section 553.72, F.S.

¹¹ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹² Sections 125.56(4)(a) and 553.79(1), F.S.

¹³ 2020 Florida Building Code (7th ed.), s. 110.

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.¹⁴

The Florida Building Code does not contain mandatory requirements for the maintenance and inspection of existing buildings in the state. 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.¹⁵ 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.¹⁶ This provision was repealed in 2010.¹⁷

Building Code Administrators, 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 subject to confirmation by the Senate.¹⁸

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.¹⁹

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:²⁰

- 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

¹⁴ 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%9320Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Feb. 16, 2023).

¹⁵ Ch. 2008-28, Laws of Fla.

¹⁶ *Id.*

¹⁷ Ch. 2010-176, s. 59, Laws of Fla.

¹⁸ Section 468.605, F.S.

¹⁹ Section 468.603(2), F.S.

²⁰ Section 468.603(5), F.S.

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:²¹

- 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.”²² In response to this tragedy, the Legislature instituted threshold building inspections, requiring licensed “special inspectors” to conduct inspections for all threshold buildings.²³ 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.²⁴

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.²⁵ 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.²⁶

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.²⁷ However, a fee-simple owner may declare a building a threshold building even when it does not meet the definitions.²⁸

The inspection plan for a threshold building provides specific inspection instructions or the adequate inspection of 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

²¹ Section 468.603(8), F.S.

²² 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 Feb. 16, 2023).

²³ 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 Feb. 16, 2023).

²⁴ See s. 553.71, F.S.

²⁵ *Id.*

²⁶ Section 553.79(5)(a), F.S.

²⁷ *Id.*

²⁸ *Id.*

enforcing agency.²⁹ Special inspectors report directly to local building administrators and officials. The role of threshold building inspectors is unique to Florida.³⁰

There were 9,237 active Building Code Administrators/Inspectors licensed in Florida in Fiscal Year 2021-2022.³¹

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 to require a recertification process and inspection of buildings 40 years and older. Miami-Dade's program was established in 1975,³² and Broward County's program was modeled after Miami-Dade's and has been in effect since January 2006.³³

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.³⁴

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

²⁹ *Id.*

³⁰ Florida Board of Professional Engineers, *What Are Threshold Building Inspectors?*, available at <https://fbpe.org/what-are-threshold-building-inspectors/> (last visited Feb. 16, 2023).

³¹ Department of Business and Professional Regulation, *2021-2022 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/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Feb. 16, 2023).

³² Miami-Dade Recertification at <https://www.miamidade.gov/global/economy/building/recertification.page#:~:text=Miami%2DDade%20County%20has%20had,amended%20on%20June%201%2C%202022> (last visited Feb. 19, 2023).

³³ Broward County, Building Safety Inspection Program, available at <https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Feb. 16, 2023).

³⁴ 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 Feb. 16, 2023).

the building or structure.³⁵ Miami-Dade’s recertification program exempts buildings under 2,000 square feet,³⁶ and Broward’s program exempts buildings under 3,500 square feet.³⁷ The inspections must be carried out by a professional engineer or architect registered with the State of Florida.³⁸

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.³⁹

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 community associations. The chapters delineate requirements for notices of meetings,⁴⁰ recordkeeping requirements, including which records are accessible to the members of the association,⁴¹ and financial reporting.⁴² 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 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.⁴³ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.⁴⁴ 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

³⁵ *Id.* at s. 8-11(f)(i).

³⁶ *Id.* at s. 8-11(f)(ii).

³⁷ Broward County, Building Safety Inspection Program, *available at*:

<https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Feb. 16, 2023)

³⁸ *Id.* and *See* Code of Miami-Dade, ch. 8, Building Code, s. 8-11(iv).

³⁹ City of Boca Raton. Ordinance 5589, *available at*: <https://www.myboca.us/DocumentCenter/View/28152/Ordinance-No-5589?bidId=> (last visited Feb. 16, 2023)

⁴⁰ *See* ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

⁴¹ *See* ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

⁴² *See* ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

⁴³ Sections 718.501(1) and 719.501(1), F.S.

⁴⁴ *Id.*

records.⁴⁵ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁴⁶

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.⁴⁷

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.⁴⁸ 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.⁴⁹

Condominiums

A condominium is a "form of ownership of real property created under ch. 718, F.S.,"⁵⁰ 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.⁵¹ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁵²

A condominium association is administered by a board of directors referred to as a "board of administration."⁵³ The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent 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.⁵⁴

⁴⁵ Section 718.501(1), F.S.

⁴⁶ Section 719.501(1), F.S.

⁴⁷ Sections 718.501(1) and 719.501(1), F.S.

⁴⁸ *Id.*

⁴⁹ *See* ss. 720.303(10)(d) and 720.306(9)(c), F.S.

⁵⁰ Section 718.103(11), F.S.

⁵¹ *See* s. 718.103, F.S., for the terms used in the Condominium Act.

⁵² *Id.*

⁵³ Section 718.103(4), F.S.

⁵⁴ Section 718.103(2), F.S.

There are approximately 1,529,764 condominium units in Florida operated by 27,588 associations.⁵⁵ Approximately 912,376 of these condominium units in Florida are at least 30 years in age.⁵⁶ 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.⁵⁷

It is estimated that there are over 2 million residents occupying condominiums 30 years or older in Florida, based upon census data of an average of approximately 2.2 persons living in a condominium unit.⁵⁸

Cooperatives

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

[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.⁵⁹ 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.⁶⁰ There are 778 cooperative associations in Florida that are registered with the DBPR.⁶¹

⁵⁵ 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 Feb. 16, 2023).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), review dismissed 2020 WL 3442763 (Fla. 2020).

⁶⁰ See ss. 719.106(1)(g) and 719.107, F.S.

⁶¹ See Task Force Report, pp. 4-5.

Official Records – Condominium and Cooperative Associations

Florida law specifies the official records that condominium and cooperative associations must maintain.⁶² Generally, the official records must be maintained in Florida for at least seven years.⁶³ Certain of these records must be accessible to the members of an association.⁶⁴ 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.⁶⁵

SB 4-D gave unit owners in condominium and cooperative associations the right to inspect and copy, as official records, the milestone inspection report and all other inspection reports relating to structural or life safety. SB 4-D also gave renters the right to inspect the milestone inspection reports.⁶⁶

A condominium association with 150 or more units is required to post digital copies of specified documents on its website or make such documents available through an application that can be downloaded on a mobile device.⁶⁷ Cooperative associations are not required to maintain such a website.

Budgets and Reserves – Florida Condominium and Cooperative Associations

Condominium and cooperative associations must have a budget of estimated revenues and expenses.⁶⁸ The board must adopt the annual budget at least 14 days before the start of the association's fiscal year.⁶⁹

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.⁷⁰

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

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

⁶⁴ See ss. 718.111(12)(a) and 719.104(2)(a), F.S., relating to condominium and cooperative associations, respectively.

⁶⁵ See ss. 718.111(12)(c) and 719.104(2)(c), F.S., relating to condominium and cooperative associations, respectively.

⁶⁶ *Id.*

⁶⁷ Section 718.111(12)(g), F.S.

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

⁶⁹ *Id.*

⁷⁰ Sections 718.112(2)(f)2.a. and 719.106(1)(j)2., F.S., relating to condominium and cooperative associations, respectively.

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, SB 4-D created ss. 718.112(2) and 719.106(1), F.S., relating to condominium and cooperative associations, to:

- Require condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height.
- Require associations existing on or before July 1, 2022, that are controlled by non-developer unit owners, to have a structural integrity reserve study completed by December 31, 2024.
- Define “structural integrity reserve study” (SIRS) as a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection of the common elements.
- Require that the study include a visual inspection, and state the estimated remaining useful life and the estimated replacement cost of the following items (structural integrity items): roof, load bearing walls or other primary structural members, floor, foundation, fireproofing and fire protection systems, plumbing, and any item with a deferred maintenance or replacement cost that exceeds \$10,000.
- Require the visual inspection to be performed by a person licensed as an engineer or an architect. However, any qualified person or entity may perform the other components of a SIRS.
- Require a developer to have a SIRS completed for each building in the association that is three stories or more in height before turning over control of an association to the non-developer unit owners.
- Provide that it is a breach of a board member or officer’s fiduciary duty if an association fails to complete a SIRS.

After December 31, 2024, condominium and cooperative associations may not waive reserves. This prohibition applies to all associations, regardless of building height. Associations also may not opt to provide less reserves or no reserves than are required for the structural integrity items. Nor may those reserves be used for any other purpose than their intended purpose.⁷¹

Reserve Studies

Ten other states require a reserve study or a reserve schedule for condominium associations, but only Florida uses the term “structural integrity reserve study.”⁷² 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.⁷³

⁷¹ Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.

⁷² 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.

⁷³ 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 Feb. 16, 2023).

The Community Associations Institute⁷⁴ and the Association of Professional Reserve Analysts⁷⁵ provide certification standards to certify persons to perform reserve studies.

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, cooperative, and homeowners' 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 governing board of the association must complete, or contract with a third party to complete, the financial report. Within 21 days after the financial report is completed by the board 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 is required to adopt rules setting forth uniform accounting principles, standards, and reporting requirements for cooperative associations.⁷⁶ 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.⁷⁷

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, including a copy of the inspector prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4), F.S., and a copy of the most recent SIRS or a statement that the association has not completed a SIRS.⁷⁸ Current law does not require the developer to provide a statement that a required milestone inspection has not been completed or that such an inspection is not required. Current law also does not provide for a statement if a SIRS is not required.

⁷⁴ See Community Association Institute, *Reserve Specialist*, <https://www.caionline.org/LearningCenter/credentials/Pages/RS.aspx> (last visited Feb. 17, 2023).

⁷⁵ See Association of Professional Reserve Analysts, <https://www.apra-usa.com/> (last visited Feb. 17, 2023).

⁷⁶ Section 719.104(4)(a), F.S.

⁷⁷ Section 718.111(13), F.S. See also s. 719.104(4)(a), F.S., which requires the division to adopt rules setting forth uniform accounting principles, standards, and reporting requirements for cooperative associations. Sections 718.501(1)(f) and 719.501(1)(f), F.S., also authorize the division to adopt rules to administer and enforce chs. 718 and 719, F.S.

⁷⁸ Sections 718.503(1) and 719.503(1), F.S.

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.⁷⁹

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.⁸⁰ 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.⁸¹

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.⁸²

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.⁸³

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

⁷⁹ 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.

⁸⁰ 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.

⁸¹ *Id.*

⁸² Sections 718.504 and 719.504, F.S., requiring a prospectus or offering circular for a residential condominium or cooperative unit, respectively.

⁸³ 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.

nonbinding arbitration or initiate presuit mediation. Unit owners in cooperative associations are also subject to the dispute resolution requirements in s. 718.1255, F.S.⁸⁴

Disputes in cooperative associations, including recall election disputes, are subject to the same alternative dispute resolution requirements and procedures applicable to condominiums as set forth in s. 718.1255, F.S.⁸⁵

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.⁸⁶

Alternative dispute resolution is required for any disagreements between two or more parties that involves:⁸⁷

- 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;⁸⁸
- 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:⁸⁹

- 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
- 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.⁹⁰

⁸⁴ See s. 719.1255, F.S.

⁸⁵ Sections 719.1255 and 719.106(1)(f), F.S.

⁸⁶ Section 718.1255(3)(b), F.S., providing legislative findings regarding the advantages of pre-suit alternative dispute resolution.

⁸⁷ Section 718.1255(1)(a), F.S., defining the term "dispute."

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Section 718.1255(5), F.S.

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,⁹¹ 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.⁹²

The filing fee for a petition to the division to initiate nonbinding arbitration or presuit mediation is \$50.⁹³ 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.⁹⁴

The mediation of disputes in condominium and cooperative associations is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowners' 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.⁹⁵

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.⁹⁶

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.⁹⁷

Insurance

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.⁹⁸ Citizens

⁹¹ Section 718.1255(4)(a), F.S.

⁹² Section 718.1255(4)(k), F.S.

⁹³ Section 718.1255(4)(a), F.S.

⁹⁴ Section 718.1255(2), F.S.

⁹⁵ *Id.*

⁹⁶ Section 720.311(2)(b), F.S.

⁹⁷ Sections 718.112(2)(k) and 719.106(1)(l), F.S., relating to condominium and cooperative associations, respectively.

⁹⁸ The term "admitted market" means insurance companies licensed to transact insurance in Florida.

is not a private insurance company.⁹⁹ Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).¹⁰⁰

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors (board) that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.¹⁰¹ The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.¹⁰² Citizens is subject to regulation by the Office of Insurance Regulation.

Citizens offers property insurance through three different accounts: a personal lines account, a commercial lines account, and a coastal account.

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind damage in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owners policies.¹⁰³

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.¹⁰⁴

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.¹⁰⁵

Flood Insurance

The Flood Disaster Protection Act of 1973 (FDPA)¹⁰⁶ prohibits lending institutions from making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home located in special flood hazard areas and in which flood insurance has been made available

⁹⁹ Section 627.351(6)(a)1., F.S.

¹⁰⁰ Section 2, ch. 2002-240, Laws of Fla.

¹⁰¹ Section 627.351(6)(a)2., F.S.

¹⁰² Section 627.351(6)(c)4.a., F.S.

¹⁰³ See s. 627.351(6)(b)2.a., F.S.; Citizens, *Account History and Characteristics*,

<https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563> (Mar. 2016) (last visited Feb. 16, 2023).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ 42 U.S.C. s. 4012a.(b).

under federal law, unless the building or mobile home is covered by flood insurance in an amount equal to the outstanding principal balance of the loan or the maximum limit of coverage available.

Under Florida law, an authorized insurer may issue a policy for flood insurance coverage,¹⁰⁷ but homeowners' insurance policies typically do not cover flood losses.¹⁰⁸ Although private flood insurance may be obtained by endorsement or a separate policy, this requirement is generally satisfied with coverage obtained through the National Flood Insurance Program (NFIP) which is managed by Federal Emergency Management Agency (FEMA).¹⁰⁹ The NFIP offers flood insurance coverage for buildings and content which must be purchased separately with separate deductibles. For residential property, the maximum coverage amount is \$250,000 for the building and \$100,000 for the contents and, for commercial property, the maximum coverage for building and building contents is \$500,000 each.¹¹⁰

Flood Zones

The National Flood Insurance Program with the Federal Emergency Management Administration (FEMA) maintains flood maps to show a community's risk of flooding. The map provides flood zones to designate the flooding risks. Flood risk areas that are designated with the letters B, C, and X on the FEMA flood maps are moderate to low-risk flood areas and have a reduced but not completely removed flood risk. One in three insurance claims come from moderate to low-risk flood areas. Flood risk areas that are designated with the letters A or V on the FEMA flood maps have the highest risk of flooding. Owners of properties that are in a high-risk zone and have a federally backed mortgage are required to purchase flood insurance as a condition of the loan.¹¹¹

Flood Notice

An insurer that issues or renews a homeowner's insurance policy without flood coverage must include the following statement with the policy documents:

“FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.”

¹⁰⁷ Section 627.715(1), F.S.

¹⁰⁸ Disaster Rally, *National Flood Insurance Program – How to Be Eligible*, [National Flood Insurance Program - How to Be Eligible \(disasterrally.com\)](https://www.nationalfloodinsuranceprogram.gov/how-to-be-eligible) (last visited Feb. 20, 2023).

¹⁰⁹ The Office of the Comptroller of the Currency, *Flood Disaster Protection Act: Guidance Regarding Lapse and Extension of FEMA's Authority to Issue Flood Insurance Contracts*, Jun. 9, 2010, [Flood Disaster Protection Act: Guidance Regarding Lapse and Extension of FEMA's Authority to Issue Flood Insurance Contracts | OCC \(ots.gov\)](https://www.ots.gov/press-releases/2010/06/09/flood-disaster-protection-act-guidance-regarding-lapse-and-extension-of-fema-s-authority-to-issue-flood-insurance-contracts) (last visited Feb. 16, 2023).

¹¹⁰ The FEMA, National Flood Insurance Program, *Understanding Your Policy Terms*, [Flood Insurance Coverage, Deductibles Explained \(floodsmart.gov\)](https://www.floodsmart.gov/understanding-your-policy-terms) (last visited Feb. 16, 2023).

¹¹¹ The FEMA, National Flood Insurance Program, *What is a flood map?*, [FEMA Flood Maps Explained \(floodsmart.gov\)](https://www.floodsmart.gov/what-is-a-flood-map) (last visited Feb. 17, 2023).

Citizens Flood Insurance Requirement

Section 627.351(6)(aa), F.S., requires Citizens personal lines residential policyholders to secure and maintain flood insurance that meets certain requirements as a condition of eligibility for Citizens coverage. There is a timetable for implementation of the flood insurance coverage requirement for personal lines residential Citizens policyholders. For Citizens personal lines residential policyholders whose property is located within special hazard flood zones defined by the FEMA, flood coverage must be obtained by:

- April 1, 2023 for Citizens' new policies.
- July 1, 2023 for Citizens' renewal policies.

For all other risks, the requirement to obtain flood insurance must be implemented for specified Citizens' policyholders as follows:

- March 1, 2024, for policies insuring property to a limit of \$600,000 or more.
- March 1, 2025, for policies insuring property to a limit of at least \$500,000 but less than \$600,000.
- March 1, 2026, for policies insuring property to a limit of at least \$400,000 but less than \$500,000.
- March 1, 2027, for all other policyholders.

III. Effect of Proposed Changes:

Community Association Managers

Section 468.4334(1), F.S., requires a community association manager or firm that has a contract with a community association that has a building on the association's property that is subject to s. 553.899, F.S., to comply with that section as directed by the board. The bill amends that section to delete the redundant term "that has a building on the association's property."

Milestone Inspections

The bill amends s, 553.899, F.S., to revise the milestone inspection requirements to:

- Limit the milestone inspection requirements to residential condominium and cooperative buildings;
- Provide that the milestone inspection requirements apply to buildings that in whole or in part are subject to the condominium or cooperative forms of ownership, such as mixed-use buildings;
- Clarify that in mix-use buildings, in which portions of the building are not subject to the condominium or cooperative form of ownership, all of the owners of the building are responsible for ensuring compliance and must share the costs of the inspection;
- Provide that the condominium or cooperative association is responsible for all costs associated with the inspection attributable to the portions of the building for which it is responsible under the governing documents of the association;
- Delete the 25-year milestone inspection requirement for buildings that are within three miles of the coastline;

- Provide an option for local enforcement agencies that are responsible with enforcing the milestone inspection requirements to set a 25-year inspection requirement if justified by local environmental conditions, including proximity to seawater;
- Authorize the local enforcement agency to extend the inspection deadline for a building upon a petition showing good cause that the owner or owners of the building have entered into a contract with an architect or engineer to perform the milestone inspection services and the milestone inspection cannot be reasonably completed before the deadline;
- Clarify various terms, such as referencing the “life of the building” instead of “its service life;”
- Provide that the inspection services may be provided by a team of design professionals with an architect or engineer acting as a registered design professional in responsible charge;¹¹²
- Revise the definition of the term “substantial structural deterioration” to include “structural weakness;”
- Require the milestone inspection report to be given to any other owner of the building that is not a condominium or cooperative association;
- Require the milestone inspector to submit a phase two progress report to the local enforcement agency within 180 days of submitting the phase one inspection report; and
- Clarify that the association must distribute a copy of the summary of the inspection reports to unit owners within 30 days of its receipt.

Regarding the Florida Building Commission, the bill requires the commission to establish by rule a building safety program to implement the milestone inspection requirements within the Florida Building Code. The commission must specify the minimum requirements for the commission’s building safety program by December 31, 2024, including inspection criteria, testing protocols, standardized inspection and reporting forms that are adaptable to an electronic format, and record maintenance requirements for the local authority having jurisdiction.

Flood Insurance

The bill amends s. 627.351, F.S., to exempt from the flood insurance requirement any unit that is insured for personal property under a master policy covering flood or if the unit is above a certain floor based on the unit’s location within, or outside of, a special flood hazard area.

A unit in a coastal V-zone of a special flood hazard area is exempt if it is on the fifth floor or above.

A unit in a coastal A-zone of a special flood hazard area is exempt if it is on the third floor or above.

¹¹² Fla. Admin. Code R. 61G15-18.011 defines the term “responsible charge” to mean “that degree of control an engineer is required to maintain over engineering decisions made personally or by others over which the engineer exercises supervisory direction and control authority. The engineer in responsible charge is the Engineer of Record as defined in subsection 61G15-30.002(1), F.A.C.” *See also* Florida Board of Professional Engineers, Engineer Interns and Responsible Charge at <https://fbpe.org/engineering-interns-and-responsible-charge/> (last visited Feb. 21, 2023).

A unit that is not in a special flood hazard area is exempt if it is on the second floor or above. Flooding can happen in almost any area in Florida, so outside of a Special Flood Hazard Zone the requirement is imposed on the first floor.

Access to Records

The bill amends ss. 718.111(12)(c) and 719.104(2)(c), F.S., relating to the access to official records for condominium and cooperative associations, respectively, to clarify that both any association member and any person authorized by the association member as a representative may inspect the official records of the association. It clarifies that the association does not have the right to choose which party, the member or their representative, has the right to inspect the official records of the association.

Reserves and the Structural Integrity Reserve Study

Definitions

The bill creates s. 718.103(1), F.S., to define the term “alternative funding method” to mean a method approved by the division for funding the capital expenditures and deferred maintenance obligations for a multicondominium association. The method must reasonably be expected to fully satisfy the association’s reserve funding obligations. A division-approved method includes, but is not limited to, the allocation of funds in the annual operating budget. The bill does not provide a comparable provision for cooperative associations because current law does not authorize “multi-cooperative associations.”

The bill also revises the definition of the term “structural integrity reserve study” in ss. 718.103(25) and 719.103(24), F.S., to move the substantive SIRS requirements for condominiums and cooperatives, respectively, from the definition subsection to the SIRS provisions in ss. 718.112(2)(g) and 719.106(1)(k), F.S., as amended by the bill.

Reserve Funding Requirements

The bill revises the reserve funding requirements in ss. 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominiums and cooperative associations, respectively, to:

- Require associations that are subject to the SIRS requirement to base a budget adopted on or after January 1, 2025, on the findings and recommendations of the most recent SIRS;
- Distinguish the reserve accounting requirements for associations that are subject to the SIRS requirements and those associations that are not subject to those requirements by:
 - Limiting the prohibition against the waiving of reserves and the use of reserves for other purposes to the associations that must perform the SIRS;
 - Permitting unit owners in nondeveloper-controlled associations that are not required to have a SIRS, to vote to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose, if approved by a majority vote of all voting interests.¹¹³

¹¹³ Under current law, until December 31, 2024, when the waiver prohibition in SB 4-D takes effect, the required vote to waive reserves is by a majority of association members voting in person at a meeting in person or by proxy.

- Permit multicondominium associations to waive reserves if an alternative funding method has been approved by the division;
- Provide that reserve assessments may be adjusted for inflation; and
- Prohibit the uses of reserve funds for the SIRS items for other purposes other than the “replacement or deferred maintenance costs of the SIRS components” instead of “their intended purposes.”

Structural Integrity Reserve Studies

The bill amends the SIRS requirements in ss. 718.112(2)(g) and 719.106(1)(j), F.S., relating to condominiums and cooperative associations, respectively, to:

- Limit the SIRS requirement to residential condominium and cooperatives;
- Replace the term “common areas” with “condominium property” or “cooperative property,” where appropriate;
- Clarify that the SIRS recommendation must include a reserve funding schedule;
- Delete “floor” from the list of building components that must be visually inspected in the SIRS;
- Permit the visual inspection portion of the SIRS to be verified by an engineer or architect;
- Permit persons who have been certified as a Reserve Specialist, or Professional Reserve Analyst by the Community Associations Institute or the Association of Professional Reserve Analysts to perform or verify the visual inspection portion of the SIRS;
- Clarify that the SIRS may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost or deferred maintenance expense cannot be determined;
- Require reserves for deferred maintenance for the amount recommended by the SIRS, including for items for which there is no ascertainable estimate of useful life;
- Exempt from the SIRS requirement:
 - Buildings less than three stories in height, building;
 - Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; and
 - Any portion or component of a building that has not been submitted to the condominium or cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the condominium or cooperative association.

Dispute Resolution

Effective July 1, 2027, the bill amends the dispute resolution provision in s. 718.1255, F.S., to redefine the term “dispute” to permit unit owners in condominium and cooperative associations to utilize the mediation process in s. 720.311, F.S., related to disputes in homeowners’ associations. Under the bill, condominium and cooperative unit owners may use the mediation process in this section for disputes related to failure of a governing body to perform a required structural or life safety inspection, including the milestone inspection, perform a structural integrity reserve study, fund reserves, or make or provide necessary maintenance or repairs of association property as recommended by the milestone inspection or SIRS.

Effective July 1, 2027, the bill reenacts s. 719.1255, F.S., relating to cooperative association disputes, to incorporate the amendments made to s. 718.1255, F.S.

Maintenance Obligations of the Association

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 elements¹¹⁴ assigned to the unit by the declaration; and
- 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.

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.

Presale Disclosures

The bill amends ss. 718.503(1)(b) and 719.503(1)(b), F.S., for condominium and cooperative associations, respectively, to require developers to give prospective buyers of a unit a statement in conspicuous type indicating that the association has not completed the milestone inspection or is not required to complete a milestone inspection, if applicable.

Sections ss. 718.503(1)(b) and 719.503(1)(b), F.S., for condominium and cooperative associations, respectively, are also amended to provide that the statement that the required reserve study has not been completed must be in conspicuous type, if applicable. It also requires a statement that the association is not required to complete a reserve study, if applicable.

The bill creates ss. 718.503(1)(d) and 719.503(1)(d), F.S., relating to condominium and cooperative associations, to provide additional presale notice requirements in contracts for sales of a unit by a developer or nondeveloper. This provision is similar to current contract notices related to developer and nondeveloper unit owners' obligations to furnish certain governing documents to the prospective buyer of a unit more than three days before execution of the contract for sales by a nondeveloper or 15 days before execution of the contract for sales by a developer. The bill:

- Requires a presale contract notice advising that the association has failed to complete a required milestone inspection or SIRS, as appropriate, or advising that the association is not required to have a milestone inspection or SIRS;
- Creates a contract notice for associations that have completed the milestone inspection and SIRS in which the prospective buyer acknowledges that he or she has been provided a copy

¹¹⁴ 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.

of the most recent structural integrity reserve study and milestone inspection report, if applicable;

- Creates a contract notice that advises the prospective buyer that the sales contract is voidable if the buyer has not been provided with a current copy of the SIRS or the inspector-prepared summary more than 15 days before the execution of a contract with a developer or three days before the execution of the contract with a nondeveloper; and
- Provides that a contract that does not conform to these notice requirements is voidable at the option of the purchaser prior to closing.

Rulemaking

The bill reenacts the existing rulemaking authority of the Division of Florida Condominiums, Timeshares, and Mobile Homes in ss. 718.501(1)(f) and 719.501(1)(f), F.S., relating to condominium and cooperative associations.

Effective Dates

The bill takes effect upon becoming law. However, the dispute resolution provision in s. 718.1255, F.S., and the reenacting of s. 719.1255, F.S., take effect on July 1, 2027.

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.

The agency analysis from the Florida Building Commission for SB 1702 (Reg. Sess. 2022), which provided a similar milestone inspection requirement, noted that the comparable 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.¹¹⁵ The agency analysis for this bill did not mention this information.¹¹⁶

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.

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) estimates that the Florida Building Commission (commission) may need to appoint a workgroup and hire a group of experts to research and assist with the development of minimum standards and protocols for the implementation of the building safety program. The commission staff estimates this could cost between \$200,000 and \$250,000 for fiscal years 2023-2024 and 2024-2025. The Division of Condominium, Timeshares, and Mobile Homes (division) states that it will incur additional expenses related to the number of full-time employees (FTE) required to review and analyze the new reserve requirements. The division will also need funding to contract for the review and analysis of the alternative funding methods with licensed professionals.¹¹⁷ The division estimates it will need 10 additional staff (8 FTE and 2 supervisors) and associated costs.¹¹⁸

VI. Technical Deficiencies:

None.

¹¹⁵ 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).

¹¹⁶ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for SB 154* (Feb. 14, 2023) (on file with the Senate Regulated Industries Committee).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

VII. Related Issues:

Fannie Mae¹¹⁹ and the Federal Housing Administration¹²⁰ have altered their requirements for loans secured by condominiums 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 condominiums 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.¹²¹ 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.¹²²

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.4334, 553.899, 627.351, 718.103, 718.111, 718.112, 718.1255, 718.113, 718.503, 719.103, 719.104, 719.106, 719.503, 558.002, 718.116, 720.3085, and 719.1255.

This bill reenacts the following sections of the Florida Statutes: 718.501 and 719.501.

IX. Additional Information:

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

CS by Regulated Industries on February 21, 2023:

The CS:

- Amends s. 553.899(3), F.S., to clarify that in a mixed-use building the condominium or cooperative associations and the other owners of the building are equally responsible for arranging the milestone inspection;
- Amends ss. 718.503(1)(b) and 719.503(1)(b), F.S., for condominium and cooperative associations, respectively, to revise the types of documents the developer must give prospective buyers of a unit;
- Amends ss. 718.503(1)(d) and 719.503(1)(d), F.S., relating to condominium and cooperative associations, respectively, to specify the number of days before execution of the contract that the documents must be provided to the prospective purchaser; and

¹¹⁹ Fannie Mae, Lender Letter (LL-20221-14), Oct. 12, 2021, available at: <https://singlefamily.fanniemae.com/media/29411/display> (last visited Feb. 21, 2023).

¹²⁰ 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 Feb. 21, 2023).

¹²¹ *Supra* n. 116.

¹²² Freddie Mac, *Established Condominium Projects*, Effective June 1, 2022, available at: <https://guide.freddiemac.com/app/guide/section/5701.5> (last visited Feb. 21, 2023).

- Replaces the rulemaking provision in the bill with a reenacting of the existing rulemaking authority of the Division of Florida Condominiums, Timeshares, and Mobile Homes in ss. 718.501(1)(f) and 719.501(1)(f), F.S, relating to condominium and cooperative associations, respectively.

B. Amendments:

None.

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