

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 723 Fire Protection Systems

**SPONSOR(S):** Government Operations & Technology Appropriations Subcommittee, Donalds and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 2 N	Brackett	Anstead
2) Government Operations & Technology Appropriations Subcommittee	9 Y, 3 N, As CS	Helpling	Topp
3) Commerce Committee			

### SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located within the Department of Business and Professional Regulation, has regulatory authority over condominium associations.

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code) by rule every three years. The Fire Code sets forth fire safety standards (including certain national codes) for property, and is enforced by local fire officials within each county, municipality, and special fire districts in the state. The Fire Code requires existing multi-family buildings 75 feet or taller to be retrofitted with a fire sprinkler system or an engineered life safety system (ELSS). However, local governments may not require a residential condominium association to retrofit a building before January 1, 2020.

Currently, residential condominium associations may vote to waive the requirement to retrofit a building with a fire sprinkler system by a majority vote of the total voting interests.

The bill:

- Requires condominium associations to retrofit residential buildings that are greater than 75 feet in height with a fire sprinkler system or an ELSS;
- Repeals an association's ability to vote to forego the requirement to retrofit a building with a fire sprinkler system.
- Prohibits a local authority from requiring retrofitting until on or after January 1, 2022, and extends the time an association has to apply for a building permit from December 31, 2016, to July 1, 2019.
- Provides that an association must obtain the permits to retrofit a building by December 31, 2019.
- Allows condominium associations to apply for Property Assessed Clean Energy (PACE) loan programs available in their jurisdiction to fund retrofitting a residential building that is greater than 75 feet in height with a fire sprinkler system or an ELSS;
- Provides that a local authority may accept inspection reports of fire protection systems and fire hydrants by U.S. mail, hand delivery, or through a third party vendor that collects reports on behalf of local authorities.
- Requires the State Fire Marshal to adopt rules to implement a uniform submission procedure for fire protection systems and fire hydrant inspections.

The bill may have an indeterminate positive fiscal impact on local government revenue and an indeterminate negative fiscal impact on the private sector. See *Fiscal Analysis and Economic Impact Statement*.

The bill provides for an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

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

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

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities. A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located. A declaration governs the relationships among condominium unit owners and the condominium association.

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a “board of administration.” The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.<sup>1</sup>

##### *Property Assessed Clean Energy Programs*

In 2010, the Legislature authorized local governments, by ordinance or resolution, to create programs to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements.<sup>2</sup> Under these programs, commonly referred to as “Property Assessed Clean Energy” or “PACE” programs, a property owner within the jurisdiction of a local government that offers a PACE program may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.

A “qualifying improvement” includes the following:

- Any energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other form of energy on the property;
- A renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses hydrogen, solar, geothermal energy, bioenergy, or wind energy; and
- Certain wind resistance improvements.<sup>3</sup>

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<sup>1</sup> Ss. 718.103(11) & 718.104(2), F.S.

<sup>2</sup> Ch. 2010-139, s. 1, Laws of Fla.

<sup>3</sup> S. 163.08(2)(b), F.S.

Local governments choose whether or not to support a PACE program.<sup>4</sup> Accordingly, a property owner may only participate in a PACE program if the property is located within the boundaries of a local government that offers a PACE program.<sup>5</sup> If the local government supports a PACE program, the local government often contracts with a PACE “provider” (or providers) to administer the program. The provider may be a third party entity or an entity that consists of multiple local governments created by interlocal agreement.<sup>6</sup>

Once a provider is in place, the local government’s role in the program is often to serve as a conduit issuer of bonds. Local governments pay for the qualifying improvements up front and are paid back by placing a non-ad valorem assessment on the improved property’s tax bill. To finance the program, the local government issues bonds that are sold to the PACE provider (or an investor in the PACE provider), and the bond proceeds are used to finance the PACE improvement. The bonds are in turn repaid (“backed”) by a voluntary special assessment that the local government levies on the property receiving the PACE improvement.<sup>7</sup> The assessment attaches to the property and takes priority to any mortgage on the property.<sup>8</sup>

#### *State Fire Prevention – State Fire Marshal*

Florida’s fire prevention and control law, ch. 633, F.S., designates the state’s Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.<sup>9</sup>

#### *Adoption and Interpretation of the Florida Fire Prevention Code*

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules in ch. 69A-60, F.A.C.

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

- NFPA’s Fire Code 1;
- Life Safety Code 101; and
- Guide on Alternative Approaches to Life Safety 101A.<sup>10</sup>

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state. The State Fire Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.<sup>11</sup>

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<sup>4</sup> S. 163.08(3)-(4), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> S. 163.08(5)-(6), F.S.

<sup>7</sup> S. 163.08(4), (8), (14), F.S.

<sup>8</sup> *See* S. 163.08(8), F.S.

<sup>9</sup> S. 633.104, F.S.

<sup>10</sup> S. 633.202, F.S.; Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, <http://www.nfpa.org/about-nfpa> (last visited on Feb. 22, 2019).

<sup>11</sup> Ss. 633.104(6) & 633.202, F.S.

## *Fire Safety Enforcement by Local Governments*

Current law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.<sup>12</sup>

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal. Each county, municipality, and special district with fire safety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.<sup>13</sup>

Section 633.208(5), F.S., states “With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety.” Pursuant to s. 633.208(5), F.S., local fire officials shall apply the Fire Code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.

## *Inspection of Fire Hydrants and Fire Protection Systems*

Any person who wishes to inspect fire extinguishers or pre-engineered fire protection systems must have a fire protection system’s contractor license issued by the State Fire Marshal. If a fire protection system contractor inspects a fire hydrant or a fire protection system in a building, the contractor must provide the building owner or hydrant owner, and the local authority, a copy of the inspection report.<sup>14</sup>

## *Fire Sprinklers and Engineered Life Safety Systems*

The Fire Code requires existing multi-family buildings 75 feet or taller (approximately seven stories), including condominiums, to be retrofitted with fire sprinkler systems.<sup>15</sup> All condominiums built since 1994 that are three stories or more have sprinkler systems and thus are in compliance.<sup>16</sup>

According to DFS, the height requirement to retrofit a building is 75 feet because the majority of fire apparatuses are not capable of reaching a height greater than 75 feet.<sup>17</sup>

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

- partial automatic sprinkler protection;
- smoke detection alarms;
- smoke control; and
- compartmentation or other approved systems.<sup>18</sup>

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<sup>12</sup> Ss. 633.108, 633.208, & 633.214(4), F.S.

<sup>13</sup> Ss. 633.118 & 633.216(1), F.S.

<sup>14</sup> Ss. 633.304, 633.312, & 633.318, F.S.

<sup>15</sup> Department of Financial Services, Agency Analysis of 2019 House Bill 723, p. 1 (Feb. 13, 2019); Section 13.3.2.26 of the 6<sup>th</sup> edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

<sup>16</sup> S. 553.895(2), F.S.

<sup>17</sup> Email from Meredith Stanfield, Director of Legislative Affairs, Department of Financial Services, RE: HB 647 (Mar. 4, 2019).

<sup>18</sup> 101:31.3.5.12.3 & 101: 31.3.5.12.4 of the 6<sup>th</sup> edition of the Florida Fire Prevention Code 6<sup>th</sup> edition (NFPA 101, Life Safety Code).

The Fire Code does not require existing multi-family buildings 75 feet or taller to retrofit if every dwelling unit in the building has an exterior exit access.<sup>19</sup>

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

### *History of Retrofitting*

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

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

- Unit owners in residential condominium associations may vote to forego retrofitting a building with a fire sprinkler system or an ELSS. A vote to forego retrofitting required a two-thirds vote of all voting interests in the affected association.
- Local governments may not require an association to retrofit before the end of 2014.
- However, associations could not vote to forego retrofitting a sprinkler system in any “common area” of a “high rise” building.
  - The common area of a high-rise building includes any enclosed hallway, corridor, lobby, stairwell, or entryway.
  - A high-rise building is defined as a building greater than 75 feet in height. The building height is measured from the lowest level of fire department access to the floor of the highest occupiable story.<sup>20</sup>

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

In 2009, Governor Crist vetoed Senate Bill 714 of the 2009 Legislative Session, which included a provision that extended the start date that local governments could require associations to retrofit from 2014 to 2025. Governor Crist also directed DBPR to initiate a review of the costs to retrofit and the impacts retrofitting may have on insurance premiums.<sup>21</sup>

In October 2009, DBPR completed their report. DBPR’s report estimated that retrofitting a condominium with sprinklers would cost from \$595 to \$8,633 per unit. The costs vary depending on a number of factors such as the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and type of construction.<sup>22</sup> Opponents of the requirement to retrofit have indicated that the cost to retrofit a building can range from \$5,000 per unit to in excess of \$20,000 per unit.<sup>23</sup> According to DBPR, they received 19 certificates from associations stating they completed retrofitting since 2004. Five of those certificates included the cost to complete retrofitting, which ranged from \$908 per unit to \$3,291 per unit with an average of \$2,196 per unit.<sup>24</sup>

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<sup>19</sup> 101:31.3.5.12.2 of the 6<sup>th</sup> edition of the Florida Fire Prevention Code 6<sup>th</sup> edition (NFPA 101, Life Safety Code).

<sup>20</sup> Ss. 718.112(2)(1), F.S. (2003)

<sup>21</sup> Letter from Charlie Crist, Governor of the state of Fla., to Kurt S. Browning, Sec’y of State (June 1, 2009), [http://www.butler.legal/files/2009\\_sb714.pdf](http://www.butler.legal/files/2009_sb714.pdf) (last visited Feb. 28, 2019).

<sup>22</sup> Department of Business & Professional Regulation, Condominium Sprinkler Retrofit Report, October 2009

<sup>23</sup> Testimony from Representative Michael Grieco, *3/6/2019 Meeting of the House Business & Professions Subcommittee*, <https://thefloridachannel.org/videos/3-6-19-house-business-and-professions-subcommittee/> (last visited Mar. 6, 2019).

<sup>24</sup> Email from Conner Mann, Legislative Affairs Coordinator, Department of Business & Professional Regulation, Retrofitting (Mar. 1, 2019).

DBPR's report also stated an association could expect to receive a 5% discount on the "all other perils" portion of their property and casualty insurance policy. In 2009, DBPR stated that "many associations have foregone retrofits because they are cash strapped in the current economy. With many units sitting empty or in foreclosure and not paying assessments, some condominiums are scraping by just paying their normal expenses."<sup>25</sup>

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

- Providing that unit owners may vote to forego retrofitting a sprinkler system in common areas of a high-rise building.
- Reducing the voting requirement to forego retrofitting a sprinkler system from a two-thirds vote to a majority vote.
- Removing the ability of residential condominium associations to vote to forego retrofitting an ELSS.
- Prohibiting local governments from requiring retrofitting before January 1, 2020.<sup>26</sup>

In 2017, Governor Scott vetoed House Bill 653 of the 2017 Legislative Session, which included a provision that condominium associations could vote to forego retrofitting a building with an ELSS in addition to being able to forego retrofitting a building with a fire sprinkler system. The bill also included a provision requiring buildings that do not retrofit to place a sign on the outside of the building stating that the building has not been retrofitted.

Governor Scott stated his reasons for vetoing were:

"Fire sprinklers and enhanced life safety systems are particularly effective in improving the safety of occupants in high-rise buildings and ensure the greatest protection to the emergency responders who bravely conduct firefighting and rescue operations. While I am particularly sensitive to regulations that increase the cost of living, the recent London high-rise fire, which tragically took at least 79 lives, illustrates the importance of life safety protections."<sup>27</sup>

### *Current Law on Retrofitting*

Current law provides that:

- An association or unit owner is not required to retrofit common elements, association property, or units of a residential condominium with a sprinkler system in a building if:
  - The building has been certified for occupancy by the applicable government entity; and
  - The unit owners vote to forego retrofitting by a majority vote of all voting interests.
- Current law only applies to fire sprinkler systems. An association may not vote to forego retrofitting a building with an ELSS.
- Local governments may not require an association to retrofit a fire sprinkler system before January 1, 2020.
- An association that has not retrofitted with a sprinkler system or an ELSS, and has not voted to waive retrofitting must initiate an application for a building permit with the local government to begin retrofitting.
- Current law only applies to residential condominiums. Nonresidential condominiums may not vote to forego any retrofitting requirements.
  - Residential condominiums consist of two or more units, any of which are intended for use as a private temporary or permanent residence. A condominium that contains commercial and residential units is a mixed-use condominium.<sup>28</sup>

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<sup>25</sup> Department of Business & Professional Regulation, *supra* note 22.

<sup>26</sup> Ss. 718.112(2)(1), F.S.

<sup>27</sup> Letter from Rick Scott, Governor of the state of Fla., to Ken Detzner, Sec'y of State (June 26, 2017), <https://www.flgov.com/wp-content/uploads/2017/06/HB-653-Veto-Letter.pdf> (last visited Feb. 26, 2019).

<sup>28</sup> Ss. 718.112(2)(1), F.S.

Current law does not specify whether an association has to retrofit or vote to forego retrofitting for a building that is 75 feet or less in height. According to DFS, this has led to numerous interpretations regarding whether an association must retrofit or vote to forego retrofitting a building that is 75 feet or less in height.<sup>29</sup>

### *Condominium Taxes*

Section 718.120, F.S., provides that ad valorem taxes, benefit taxes, and special assessments by taxing authorities shall be assessed against the condominium parcels and not upon the condominium property as a whole. Ad valorem tax, benefit tax, or special assessment may not be separately assessed against recreational facilities or other common elements if such facilities or common elements are owned by the condominium association or are owned jointly by the owners of the condominium parcels. Each condominium parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel.

### **Effect of the Bill**

Related to retrofitting, the bill:

- Requires condominium associations to retrofit the common areas and individual units of residential buildings that are greater than 75 feet in height with a fire sprinkler system or an ELSS.
- Repeals the ability of a residential condominium association to vote to forego the requirement to retrofit a building with a fire sprinkler system.
- Prohibits a local authority from requiring retrofitting of a fire sprinkler system or an ELSS until on or after January 1, 2022, and extends the time an association has to apply for a building permit, if it has not completed retrofitting, from December 31, 2016, to July 1, 2019.
- Provides that an association must obtain the necessary permits to retrofit a building by December 31, 2019.
- Includes retrofitting a residential building that is greater than 75 feet in height with a fire sprinkler system or an ELSS in the list of qualifying improvements that are available for PACE programs.
- Provides that if a condominium association obtains funding to retrofit from the PACE program the association may elect to have the PACE assessment placed on the entire association instead of the assessment being assigned to specific units. If the association elects to have the assessment placed on the entire association, it must notify the taxing authorities before the assessment is implemented.

The bill also:

- Repeals the provision stating a certificate of compliance issued by a licensed electrical contractor or electrician may be accepted as evidence an association building complies with the Fire Code.
- Provides that a local authority may accept inspection reports of fire protection systems and fire hydrants by U.S. mail, hand delivery, or through a third party vendor that collects reports on behalf of local authorities.

The bill requires the State Fire Marshal to adopt rules to implement a uniform submission procedure for fire protection systems and fire hydrant inspections for local authorities and third party vendors who collect the inspection reports on behalf of the authority. The uniform submission procedure:

- Must allow a contractor to attach additional documents to the submission include a detailed copy of the inspection report;
- May not require a contractor's inspection report to follow a standardized format;
- May not require a contractor to enter the details of the inspection report into the submission.

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<sup>29</sup> See Department of Financial Services, Agency Analysis of 2018 House Bill 1061, p. 1 (Jan. 17, 2018).

**B. SECTION DIRECTORY:**

- Section 1.** Amending s. 163.08, F.S., amending quality improvements.
- Section 2.** Amending s. 633.312, F.S., amending certain fire inspection reports and requiring the State Fire Marshal to implement rules for submitting certain fire inspection reports.
- Section 3.** Amending s. 718.112, F.S., amending the requirements to retrofit a condominium building.
- Section 4.** Amending s. 718.120, F.S., amending assessments on condominium associations.
- Section 5.** Providing an effective date of July 1, 2019.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill requires the State Fire Marshall to adopt rules relating to a submission procedure for fire protection systems and fire hydrant inspection reports which can be accomplished with existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill could have a positive fiscal impact on local government from an increase in revenue from permitting fees.<sup>30</sup>

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Unknown. The bill may have a negative economic impact on condominium owners by requiring condominium associations to retrofit or be assessed fines. It is unknown how the reduction in property insurance costs and rates may factor into the economic cost.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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<sup>30</sup> Florida Department of Financial Services, Agency Analysis of 2019 House Bill 723, p. 3 (Feb. 13, 2019).  
**STORAGE NAME:** h0723c.GOT  
**DATE:** 4/9/2019



Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes rulemaking by the State Fire Marshal relating to the submission of fire protection system and fire hydrant inspection reports.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

According to DFS:

“In 2017, there were three significant fires in high-rise residential units that are pertinent to this legislation. On June 14, 2017, a fire broke out in one of the residential units of the 24 story Grenfell Tower in London, England. Seventy people (70) died in the building in which fire sprinklers were not installed. One month later, on July 14, 2017, three (3) people died in a fire in a thirty-six (36) story Honolulu apartment complex (Marco Polo), which did not have fire sprinklers either. The complex was built in 1971, before fire sprinklers were required and had not been retrofitted with the systems. Even more recent and closer to home, an eighty-six (86)-year old woman died from a fire on the seventeenth (17th) floor of a twenty-five (25) story apartment complex in Sunny Isles, Florida on December 7, 2017. The complex did not have fire sprinklers. The events and conditions surrounding these tragic fire deaths should most certainly be examined when reviewing this legislation.”<sup>31</sup>

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 9, 2019, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the ability of local authorities to impose a \$500 per day fine on condominium associations for failing to meet application and permit deadlines.

This analysis is drafted to the committee substitute as passed by the Government Operations & Technology Appropriations Subcommittee.

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<sup>31</sup> *Id.*