HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 561 Condominiums
SPONSOR(S): Civil Justice & Courts Policy Committee; Bogdanoff; Hudson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1222

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	11 Y, 2 N, As CS	Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill lowers the cost of owning a condominium by:

- Repealing the requirement to purchase individual unit owner coverage.
- Providing that certain condominium buildings need not install a fire alarm system.
- Extending the time for retrofitting of sprinklers or engineered lifesafety systems.
- Providing for additional forms of bulk communications contracts.
- Repealing the requirement to provide alternative power supplies to elevators and alarms during emergencies.

This bill lowers the cost of owning a cooperative by:

- Extending the time for retrofitting of sprinklers or engineered lifesafety systems.
- Repealing the requirement to provide alternative power supplies to elevators and alarms during emergencies.

This bill also amends condominium law to:

- Move new director certification from election qualifying to after the election.
- Provide a means by which a bulk buyer may purchase units owned by a financially troubled developer without having to assume all of the liabilities of such developer.

This bill does not appear to have a fiscal impact on state or local governments. This bill may have significant fiscal impacts on the private sector.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominium Unit Owner Insurance

Prior to 2004, the statutes did not provide for a split of responsibility between the insurance coverage required of the condominium association and individual unit owner property insurance that a unit owner may purchase. Thus, agents and companies had difficulty in underwriting, and competing claims and competing denials of coverage led to litigation following storms and other damage events. In the 2004 legislative session, s. 718.111(11), F.S., was amended to include a provision splitting insurance responsibilities between associations and owners.

In the 2008 legislative session, the insurance provisions were substantially amended. Included in the 2008 changes is a requirement that a unit owner purchase hazard insurance, that the unit owner name the association as an additional insured, and that an association may purchase insurance on behalf of a unit owner who has not purchased the required insurance and may require the unit owner to reimburse the association for the cost of the insurance.

This bill amends the insurance provisions of the condominium law, s. 718.111, F.S., to:

- Repeal the requirement that a unit owner must obtain insurance coverage on the unit owner's unit.
- Repeal the requirement that the association be named as an additional insured on an individual unit owner's coverage.
- Replace the inaccurate term "hazard insurance" with the term "property insurance."
- Remove the requirement that the board of administration of the association give specific notice to all members of its intent to discuss property insurance deductibles.
- Specify that the association insurance policy does not cover personal property that is located within the boundaries of a unit and serves that unit only.
- Repeal the requirement that condominium associations request from unit owners evidence of a currently effective insurance policy.

This bill also amends the insurance code, creating s. 627.714, F.S., to create a requirement that condominium owners' insurance policies include a minimum special assessment coverage of $2,000, which special assessment coverage is for special assessments up to the association's deductible payable after an insured loss. The deductible may not exceed $250. A unit owner's policy is excess coverage over the amount recoverable under any other policy covering the same property. The date of loss to the association is the date of loss applicable to the $2,000 coverage, not the date of the special assessment.

Condominium Fire Alarm Systems

Section 633.0215(2), F.S., enacted in 1998, is a part of the insurance law. The act requires the State Fire Marshal to "adopt the National Fire Pamphlet 101, current editions, by reference." Pamphlet 101 is referred to as the Life Safety Code. Chapter 2000-141, L.O.F., amended the original effective date of the act from July 1, 1999 to July 1, 2001. Susbsequently, ch. 2001-186, L.O.F, amended the effective date of the act to January 1, 2002. The State Fire Marshall complied with the statute and adopted the Life Safety Code. Chapter 9.6 of the Life Safety Code requires installation of fire alarm systems in new and existing multi-family structures.

This bill adds subsection (1) to s. 633.0215, F.S., to provide that a condominium building of less than three stories in height and that is constructed with exterior corridors is exempt from the requirement to install a manual fire alarm system.

Condominium Association Directors

Current law provides that, if no person files to run for a particular seat against an incumbent director, that director is eligible for reappointment without an election. This bill amends s. 718.112(2)(d)1., F.S., to provide that if the total number of candidates for election to the board is equal to or is less than the number of vacancies, the incumbent candidates are reappointed without election.

Current law provides that co-owners of a condominium unit may not serve together on the association's board of administration. It is unclear under current law whether co-owners who own two or more units in an association are eligible to serve together on the board of administration. This bill amends s. 718.112(2)(d)1., F.S., to provide that co-owners who own more than one condominium unit in an association are eligible to serve together on the board of administration.

Current law provides that a person who is delinquent in payment of "any fee" is ineligible for election to the board of administration, and a current director who falls more than 90 days delinquent in any fee is removed by action of law from the board. This bill amends ss. 718.112(2)(d)1. and 718.112(2)(n), F.S., to provide that delinquency in payment of any "fee, fine, or special or regular assessment" disqualifies a person from running for the board, and any director or officer with a delinquency of any fee, fine, or special or regular assessment of 90 days or more is removed from the board.

Current law requires a person running for a seat on the board of administration must certify that he or she has read the condominium law and the association's governing documents upon qualifying to run for the office. A copy of the certification of each candidate must be distributed to unit owners with the notice of the election. This bill amends s. 718.112(2)(d)3., F.S., to remove the certification and distribution requirements. The bill requires newly elected directors, within 90 days of being elected, to certify in writing that they have read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies, or, in lieu thereof, submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate automatically disqualifies a director from serving on the board. However, a director who elects education will not be removed if the education provider fails to timely provide the certificate.

Condominium and Cooperative Fire Sprinker Retrofitting

Section 633.0215(2), F.S., enacted in the 1998 session, is a part of the insurance laws. This section requires the State Fire Marshal to "adopt the National Fire Protection Association's Standard 1, Fire Prevention Code . . . [and] the Life Safety Code, Pamphlet 101, current editions, by reference." The original effective date of the requirement to adopt was moved back by ch. 2000-141, L.O.F., and was moved back again by ch. 2001-186, L.O.F., to January 1, 2002. One of the many requirements of those fire prevention codes and standards is a requirement that certain existing multi-family structures be retrofitted with fire sprinkler systems within 12 years of enactment. Thus, one effect of s. 633.0215, F.S., as it currently is in law, is to require some older condominium buildings to complete installation of fire sprinkler systems (retrofit) by January 1, 2014, unless a change is made in the standards.

The state building code has required since 1994 that a multi-family structure three stories or taller must have installed sprinkler systems when first built. Prior to 1994, some local building codes required sprinklers upon initial construction of certain multi-family structures.

Section 718.112(2)(l), F.S., provides that, notwithstanding the provisions of ch. 633, F.S., or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a condominium association or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered life safety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests in the affected condominium.

However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of the common areas in a high-rise building. A high-rise building is defined as a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest story that can be occupied. For purposes of this exception, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event may the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

There are special voting, reporting, notice and recording requirements related to votes on retrofitting, including a requirement that a prospective purchaser or lessee of a condominium unit must be notified that the association has voted to forego retrofitting. Of the 74 associations that have reported to the DBPR that they have conducted a vote to forego retrofitting with sprinklers, the vote to forego failed only once and the remaining 73 have voted to forego retrofitting.[1]

This bill repeals the exception relating to buildings in excess of 75 feet, thus providing that a condominium association of a building of any height may vote to forego retrofitting of the common areas. This bill also provides that any condominium association may vote to extend the deadline for retrofitting the common areas of a high-rise condominium building with fire sprinklers or an engineered lifesafety system from the end of 2014 to the end of 2019. One a vote to forego retrofitting has been approved, 10 percent of the unit owners may petition for a vote to require retrofitting, which may be called no more than once every 3 years. A meeting to require retrofitting may not be noticed electronically.

This bill also amends cooperative law regarding retrofitting to match condominium law as amended by this bill.

Bulk Communications Contracts

Section 718.115, F.S., provides for the splitting of costs and expenses to the unit owners of the association through assessments. Section 718.115(1)(d), F.S., authorizes an association to contract

[1] Fire system retrofitting summary reports provided to staff by DBPR, on file with staff of the Civil Justice and Courts Policy Committee.

for and split the cost of a master antenna television system or a bulk cable television contract. Unlike ordinary assessments, the cost of which may vary between units, the cost of a bulk contract is split on a per-unit basis.

This bill expands the authority of a condominium association to enter into similar contracts by providing that a condominium association may enter into bulk contracts for communications services, information services, or internet services. This bill also provides that any bulk contract entered into by the developer may be cancelled within 120 days of turnover.

Current law provides that a unit owner who is blind, hearing-impaired, or receives certain government assistance for the poor may voluntarily discontinue receiving cable television service and thereby not have to pay for the service. The bill amends this provision so that that ability to discontinue a bulk service only applies to cable or video service. Therefore, such persons may be required to continue receiving, and paying for, other communication, information, and internet services contracted for by the association.

Turnover

The developer who creates a condominium also initially controls the condominium association. Turnover is the point at which control of the association must be transferred from the developer to the unit owners. Section 718.301(1), F.S., contains 7 different tests for turnover, which must occur upon the happening of the first of any of the 7. Paragraph (1)(f) requires turnover if the developer is placed into receivership and the developer has not had such receivership discharged within 30 days. This bill amends s. 718.301(1)(f), F.S., to provide that the receivership court may, within those 30 days, order that turnover not occur if the court finds that it is in the best interest of the association that the developer maintain control.

Condominium Bulk Buyers

This bill creates part VII of ch. 718, F.S., consisting of ss. 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, F.S. Section 718.701, F.S., provides that part VII of ch. 718, F.S., may be cited as the "Distressed Condominium Relief Act."

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." In essence, the statute creates two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. There are advantages that may accrue with the status as successor developer, including acquisition of certain developer-retained rights under the condominium documents and the ability to control the condominium association by electing or designating a majority of the directors of the condominium association board of directors. On the other hand, there are certain disadvantages, including potential warranty liability, liability for prior financial mismanagement of the condominium association, and loss of the ability to control the condominium association.[2]

The bill creates s. 718.702, F.S., to provide legislative findings and legislative intent. The findings include a finding that potential successor purchasers of condominium units are unwilling to accept the risk of purchase because the potential liabilities inherited from the original developer are imputed to the successor purchaser, including the foreclosing mortgagee.[3] The bill provides a statement of legislative

[2] Schwartz, *The Successor Developer Conundrum in Distressed Condominium Projects*, The Florida Bar Journal, Vol. 83, No. 7, July/August 2009.

[3] For instance, in one case the construction lender foreclosed after the original developer defaulted on a loan. The lender took title to condominium project, completed construction, and, while holding itself out as developer and owner of project, advertised and sold units to purchasers. The court found that the lender became the developer of the project and therefore liable for performance of express representations made to buyers, for patent construction defects in entire

intent that it is public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums.

Definitions

The bill amends the definition of “developer” s. 718.103(16), F.S., to exclude a bulk assignee or a bulk buyer. The bill creates s. 718.703, F.S., to define “bulk assignee” as a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or all of the rights of the developer under specified recorded documents. It also defines “bulk buyer” as a person who acquires more than seven condominium parcels but who does not receive an assignment of developer rights other than the right to conduct sales, leasing, and marketing activities within the condominium.

Changing the definition of "developer" to exclude bulk buyers and bulk assignees will have the effect of limiting the jurisdiction of DBPR over such persons under s. 718.501, F.S. Under s. 718.501(1), F.S., DBPR has full jurisdiction over an association controlled by a developer to enforce any provision of the condominium laws, but has only limited jurisdiction over an association not controlled by a developer.

Assignment and Assumption of Developer Rights

Creates s. 718.704, F.S., relating to the assignment and assumption of developer rights. In general, a bulk assignee assumes all liabilities of the developer. However, a bulk assignee is not liable for:

- Construction warranties, unless related to construction work performed by or on behalf of the bulk assignee.
- Funding converter reserves for a unit not acquired by the bulk assignee.
- Providing converter warranties on any portion of the condo property except as provided in a contract for sale between the assignee and a new purchaser.
- Including in the cumulative audit required at turnover for an audit of income and expenses during the period prior to assignment.
- Any actions taken by the board prior to the time at which the bulk assignee appoints a majority of the board.
- The failure of a prior developer to fund previous assessments or resolve budgetary deficits.

An acquirer of condominium parcels is not considered a bulk assignee or a bulk buyer if the transfer of parcels was done to hinder, delay, or defraud any purchaser, unit owner, or the association, or if the acquiring person or entity is considered an insider.[4]

Development rights may be assigned to a bulk assignee by the developer, by a previous bulk assignee, or by a court of competent jurisdiction acting on behalf of the developer or previous bulk assignee.

- There may be more than one bulk buyer but not more than one bulk assignee within a condominium at any particular time.
- If more than one acquirer receives an assignment of development rights from the same person, the bulk assignee is the acquirer who first records the assignment in the applicable public records.

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condominium project, and for breach of any applicable warranties due to defects in portions of project completed by lender. *Chotka v. Fidelco Growth Investors*, 383 So.2d 1169 (Fla. 2nd DCA 1980).

[4] The bill references the definition of "insider" at s. 726.102(7), F.S. Chapter 726, F.S., prohibits fraudulent transfers.

Transfer to Unit Owner-Controlled Board

The bill creates s. 718.705, F.S., relating to the transfer of control of the condominium board of administration. The bill provides that transfer of condominium units to a bulk assignee is not a transfer that would require turnover. However, units transferred from the bulk assignee count for purposes of determining when turnover is required.

In an ordinary turnover, the developer is required to deliver certain items and documents to the new board of administration that is controlled by unit owners. A bulk assignee is only required, however, to turnover items and documents that the bulk assignee actually has. A bulk assignee has the duty to attempt to obtain turnover materials from the original developer, and must list materials that the bulk assignee was unable to obtain.

Sale or Lease of Units by a Bulk Assignee or a Bulk Buyer

Under current law, a successor developer may be liable for filing anew all of the condominium documents for regulatory review. The bill creates s. 718.706, F.S., relating to the sale or lease of units by a bulk assignee or a bulk buyer: Prior to the sale or lease of units for a term of more than 5 years, a bulk assignee or a bulk buyer must file the following documents with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation:

- Updated prospectus of offering circular, or a supplement, which must include the form of contract for purchase and sale;
- Updated Frequently Asked Questions and Answers sheet;
- Executed escrow agreement if required under s. 718.202, F.S., relating to sales or reservation deposits prior to closing; and
- Financial information required under s. 718.111(13), F.S. (association financial report for preceding fiscal year), unless the report does not exist for the previous fiscal year prior to acquisition by bulk assignee or accounting records cannot be obtained in good faith, in which case notice requirements must be met.

In addition, a bulk assignee (but not a bulk buyer) must file with the division and provide each purchaser with a disclosure statement that includes, but is not limited to, the following:

- A description of any rights of the developer assigned to the bulk assignee;
- A statement relating to the seller's limited liability for warranties of the developer; and
- If the condominium is a conversion, a statement relating to the seller's limited obligation to fund converter reserves or to provide converter warranties under s. 718.618, F.S., relating to converter reserve accounts.

Both bulk assignees and bulk buyers must comply with the nondeveloper disclosure requirements of s. 718.503(2), F.S., relating to disclosures by unit owners prior to the sale of a unit.

Similar to the restrictions on developers while they are in control of the association, a bulk assignee may not waive reserves, reduce reserves, or use a reserve for a purpose other than set aside for, unless such waiver, reduction or use is approved by a majority of the voting interests not under the control of the developer, bulk assignee, or a bulk buyer.

While in control of the association, a bulk assignee or a bulk buyer must comply with the requirements of s. 718.302, F.S., which section regulates contracts entered into by the association.

A bulk buyer must comply with the requirements of the declaration regarding the transfer of any unit by sale, lease or sublease. No exemptions afforded to a developer regarding the sale, lease, sublease, or transfer of a unit are afforded to a bulk buyer.

Condominium and Cooperative Association Emergency Power Supplies

Current law at s. 553.509(2), F.S. requires, as to any residential structure 75 feet in height or greater, that a condominium association provide a means to supply 5 days worth of electricity to the building fire alarm systems and at least one elevator. Independent power can be either through an owned generator or through a contract to have a generator delivered during emergencies. The requirement applies to new construction and required retrofitting of existing structures. Current law also requires significant recurring costs, either for periodic maintenance and inspection of owned generators or for standby generator contracts. This bill amends s. 553.509(2), F.S., to repeal these requirements.

B. SECTION DIRECTORY:

Section 1 creates s. 627.714, F.S., regarding property insurance coverage for condominium units.

Section 2 amends s. 633.0215, F.S., regarding the Florida Fire Prevention Code.

Section 3 amends s. 718.103, F.S., regarding definitions applicable to the condominium law.

Section 4 amends s. 718.111, F.S., regarding condominium associations.

Section 5 amends s. 718.112, F.S., regarding the bylaws of a condominium.

Section 6 amends s. 718.115, F.S., regarding common expenses of a condominium association.

Section 7 amends s. 718.301. F.S., regarding transfer of control in a condominium association.

Section 8 creates Part VII of ch. 718, F.S., regarding distressed condominium relief.

Section 9 amends s. 719.1055, F.S., regarding cooperative associations, to amend firesafety requirements.

Section 10 repeals a portion of s. 553.509, F.S., regarding emergency power supplies to elevators in high rise residential structures.

Section 11 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Business and Professional Regulation reports that this bill will have "[n]o significant impact. However, some costs may be associated with the development and maintenance of the education curriculum required in Section 5 of bill. These costs are unable to be determined at this time."[5]

This department's analysis was to the bill as first filed. It appears that amendments to this bill would not alter the department's fiscal analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[5] DBPR analysis dated January 11, 2010.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill contains several provisions that would save condominium unit owners from expenses required under current law. This bill will have a negative fiscal impact on vendors who supply the materials and labor necessary to comply with current law. Specifically, the sections in this bill that have a direct economic impact on the private sector are:

- Sections 1 and 4 modify insurance requirements and repeal the current requirement that every unit owner obtain insurance.
- Section 2 repeals a current requirement for alarm systems in certain 2-story condominium buildings.
- Section 5 contains provisions extending requirements for retrofitting of condominiums with sprinklers and engineered lifesafety systems.
- Section 10 of the bill repeals the requirement that a condominium association operating a high-rise building provide a power supply for at least 5 days operation of fire alarm systems and an elevator during an emergency situation.

This bill at Section 9 also saves cooperative unit owners from expenses of retrofitting with sprinklers and engineered lifesafety systems, and at Section 10 repeals requirements for emergency power.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

This bill does not require new rulemaking, but a small number of existing rules will require amendment to conform to the provisions changing the definition of "developer."[6]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill is similar to HB 419 filed in the 2009 legislative session. The companion bill, SB 714, passed both houses but was vetoed by the Governor.

[6] DBPR analysis dated January 11, 2010.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 2, 2010, the Civil Justice & Courts Policy Committee adopted 6 amendments to this bill. The amendments:

- Clarify language regarding the exemption of certain condominium buildings from a requirement to install alarms.

- Amend the provisions on removal of a director from the board of administration for failure to attend an educational seminar to provide for non-removal if the educational provider does not timely provide a certificate of attendance.

- Amend the provisions delaying retrofitting of condominiums to specify that the delay also delays any requirement for retrofitting of an engineered lifesafety system.

- Amend the provisions delaying retrofitting of condominiums to provide that the members of the association may reverse a previous vote approving delay, and thereby force retrofitting.

- Amend cooperative law regarding retrofitting with sprinklers and firesafety systems to match the condominium law changes in the bill.

The bill was then reported favorably with a committee substitute.