

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 Innovation, Industry, and Technology

BILL: SB 1152

INTRODUCER: Senator Pizzo

SUBJECT: Community Association Safety Systems

DATE: March 19, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1152 revises the requirements applicable to a condominium or cooperative association building for retrofitting the building with fire sprinklers or other engineered life safety equipment to comply with the Florida Fire Prevention Code. The bill includes vacation rentals within the requirements applicable to a residential condominium or cooperative association.

The bill exempts a building that is less than 75 feet in height from the retrofitting requirements. An association with a building that is less than 75 feet in height is not required to hold an affirmative vote to forego a requirement to retrofit the building with retrofitting a building with fire sprinklers or other engineered life safety equipment.

Under the bill, an association building that is 75 feet or greater in height (high-rise building) must comply with the retrofitting requirements or affirmatively vote by a majority vote to forego the retrofitting requirement.

The bill extends several deadlines for compliance with the requirements to comply with a fire sprinkler or other life safety requirements, including extending the date by which the local authority having jurisdiction may require compliance from January 1, 2020 to January 1, 2022.

The bill requires the certificate evidencing compliance with the retrofitting requirements be made by a licensed professional engineer instead of by a licensed electrical contractor or electrician.

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

II. Present Situation:

Condominium and Cooperative Associations

Condominiums

A condominium is a “form of ownership of real property created pursuant to [chapter 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, [as part of the ownership of] each unit, an undivided share in common [portion of the condominium property].”¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² The declaration must include the condominium’s bylaws, and the declaration functions as the condominium’s “constitution,” subject to applicable laws.³ A condominium is administered by a board of directors referred to as a “board of administration.”⁴

Cooperatives

A cooperative is similar to a condominium in many ways. However, a key distinction between the two is the sense in which a person may “own” a unit in a condominium or a cooperative. In a cooperative, a “unit owner” owns a share in the cooperative association, and he or she leases, instead of owns, a unit.⁵ The cooperative association is the corporation or other legal entity that owns the record interest or leasehold of the cooperative’s property.⁶ The cooperative association may assess costs for the maintenance of common elements.⁷

Fire Prevention in Condominium and Cooperative Buildings

Retrofitting Requirement

Retrofitting a condominium or cooperative building with a fire sprinkler system is not required if an association votes to forego it, even if other provisions of law or rules may otherwise require retrofitting condominium or cooperative buildings with a fire sprinkler system.⁸ Current law does not authorize a condominium or cooperative association to vote to forego a required retrofit of a building with an engineered life safety system (ELSS).⁹

If an association has previously voted to forego this retrofitting, the matter may be brought up for a vote to undo the prior decision as often as once every three years.¹⁰

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.103(4), F.S.

⁵ See s. 719.103(26), F.S.

⁶ Section 719.103(12), F.S.

⁷ See ss. 719.106(1)(g) and 719.107, F.S.

⁸ Sections 718.112(2)(1) and 719.1055(5)(a)1., F.S.

⁹ An ELSS consists of a combination of partial automatic sprinkler protection, smoke detection alarms, smoke control, or compartmentation or other approved systems or both. See ss. 31.3.5.11.4 and 31.3.5.11.1, Florida Fire Prevention Code, 5th Edition, 2012.

¹⁰ Sections 718.112(2)(1)2. and 719.1055(5)(b), F.S.

A condominium or cooperative association that was not in compliance with the requirements regarding a fire sprinkler system and had not voted to forego these requirements had until December 31, 2016, to apply for a building permit to undergo retrofitting. This application was required to demonstrate the association would become compliant before January 1, 2020.¹¹

Condominiums and cooperatives must receive a certificate of compliance with the retrofitting requirement from a licensed electrical contractor or electrician as evidence of compliance with the applicable fire and life safety code.¹²

Florida Fire Prevention Code

The Chief Financial Officer, acting in his capacity as the State Fire Marshal, adopts by rule the Florida Fire Prevention Code (FFPC),¹³ which contains all fire safety rules for 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 rules.¹⁴

The State Fire Marshal adopts a new edition of the FFPC every three years.¹⁵ 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.¹⁶

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 Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.¹⁷

Section 553.895(2), F.S., provides in pertinent part that:

[A]ny building which is of three stories or more and for which the construction contract is let after January 1, 1994, regardless of occupancy classification and including any building which is subject to s. 509.215, [F.S.,] shall be equipped with an automatic sprinkler system installed in compliance with the provisions of chapter 633 and the rules and codes adopted pursuant thereto.

¹¹ Sections 718.112(2)(l) and 719.1055(5)(a)1., F.S.

¹² *Id.*

¹³ See ch. 633, F.S., and the Florida Fire Prevention Code, A copy of the Florida Fire Prevention Code is available at: <https://www.myfloridacfo.com/Division/SFM/BFP/FloridaFirePreventionCodePage.htm> (last visited Mar. 7, 2019).

¹⁴ Fla. Admin. Rule ch. 69A-60 (2018).

¹⁵ Section 633.202(4), F.S.

¹⁶ Section 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 March 12, 2019).

¹⁷ Sections 633.104(6) and 633.202, F.S.

Each municipality, county, and special district with firesafety responsibilities must enforce the Florida Fire Prevention Code as the minimum firesafety code.¹⁸ However, the local authorities may adopt more stringent firesafety standards, and may establish alternative requirements to those standards on a case-by-case basis, in order to meet special situations arising from historic, geographic, or unusual conditions, if the alternative requirements result in a level of protection to life, safety, or property equal to or greater than the applicable minimum firesafety standards.¹⁹

Fire Sprinklers and Engineered Life Safety Systems

The Fire Code requires existing multi-family buildings 75 feet or taller (approximately seven stories), including condominiums and cooperatives, to be retrofitted with fire sprinkler systems.²⁰ All condominiums and cooperatives built since 1994 that are three stories or more have sprinkler systems and thus are in compliance.²¹

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.²²

The Fire Code also 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.²³ An automatic sprinkler system is not required if the building has an approved engineered life safety system.²⁴

For condominium and cooperative 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. Under the Fire Prevention Code, an engineered life safety system must be developed by a registered professional engineer experienced in fire and life safety system design.²⁵

Legislative History

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

- Unit owners in residential condominium and cooperative 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.

¹⁸ Section 633.208(2), F.S.

¹⁹ Section 633.208(3), F.S.

²⁰ Section 13.3.2.26 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).

²¹ Section 553.895(2), F.S.

²² 101:31.3.5.12.3 & 101: 31.3.5.12.4 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

²³ 101:31.3.5.12.2 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

²⁴ 101:31.3.5.12.3 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

²⁵ 101:31.3.5.12.4 of the 6th edition of the Florida Fire Prevention Code 6th edition (NFPA 101, Life Safety Code).

- Local governments may not require an association to retrofit before the end of 2014.
- 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.²⁶

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.²⁷

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.²⁸ However, the cost to retrofit a building can range from \$5,000 per unit to in excess of \$20,000 per unit.²⁹ 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.

The DBPR’s report also stated that an association could expect to receive a 5 percent discount on the “all other perils” portion of their property and casualty insurance policy. The 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.”³⁰

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.

²⁶ Sections 718.112(2)(1) and 719.1055(5) (2003), F.S.

²⁷ Letter from Charlie Crist, Governor of the state of Fla., to Kurt S. Browning, Sec’y of State (June 1, 2009), available at: <http://www.ccfj.net/PB09S714VETO.pdf> (last visited March 20, 2019).

²⁸ Department of Business & Professional Regulation, Condominium Sprinkler Retrofit Report, October 2009, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumSprinklerRetrofitReportOctober2009.pdf>.

²⁹ 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 March 19, 2019).

³⁰ Department of Business & Professional Regulation, *supra* note 28.

- Removing the ability of residential condominium or cooperative associations to vote to forego retrofitting an ELSS.
- Prohibiting local governments from requiring retrofitting before January 1, 2020.³¹

In 2017, the Governor vetoed House Bill 653 of the 2017 legislative session, which included similar language to this bill, including the following:

- Provided that in addition to being able to forego retrofitting a building with a fire sprinkler system, associations may also vote to forego retrofitting a building with an ELSS.
- Provided that a vote to forego retrofitting required a two-thirds vote of all voting interests.
- Provided that all condominium or cooperative associations that operate buildings that are greater than 75 feet in height may vote to waive retrofitting requirements.
- Extended the time that local governments may not require associations to retrofit.
- Extended the time an association has to apply for a building permit, if it has not completed retrofitting or voted to forego retrofitting.
- Required a board that operates a building that has not installed a sprinkler system in the common areas to post a sign on the outside of the building to warn persons conducting fire control and other emergency operations that there is not a sprinkler system in the building.
- Required the State Fire Marshal to adopt rules regarding the size and color of the sign, the time period within which a sign must be posted, and the location of the sign. However, the rules may not require an association to post a sign that diminishes the aesthetic value of a building.

Governor Scott stated his reasons for vetoing the bill:

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.³²

III. Effect of Proposed Changes:

The bill amends ss. 718.112(2)(l) and 719.1055(5)(a)1., F.S., relating to condominium and cooperative associations, respectively, to revise the requirements for retrofitting buildings with fire sprinklers or other engineered life safety equipment. The bill includes vacation rentals, as described in s. 509.242(1)(c), F.S.,³³ within the life safety requirements applicable to a residential condominium or cooperative association.

The bill:

³¹ Sections 718.112(2)(l), and 719.1055(5), F.S.

³² 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 March 19, 2019).

³³ Section 509.242(1)(c), F.S., defines a vacation rental to mean: “any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.”

- Requires the certificate evidencing compliance with the retrofitting requirements be made by a licensed professional engineer instead of by a licensed electrical contractor or electrician.
- Includes other engineered life safety systems within the retrofitting options.
- Exempts a building that is less than 75 feet in height from the retrofitting requirements for a fire sprinkler system or other engineered life safety system without first requiring an opt-out vote.
- Provides that a building 75 feet or greater in height (high-rise building) must comply with the retrofitting requirement or affirmatively vote by a majority vote to forego from the retrofitting requirement.
- Requires the height of a building to be determined by measuring the distance from the lowest level of fire department vehicle access to the floor of the highest occupiable story.
- Extends the following operative deadlines for condominium and cooperative associations with a high-rise building that is not compliant with fire sprinkler or other life safety requirements:
 - From January 1, 2020 to January 1, 2022, the date by which the local authority having jurisdiction may require compliance;
 - From December 31, 2016 to December 31, 2019, the date by which the association must affirmatively vote (by a majority vote of all voting interests) to forego retrofitting;
 - From December 31, 2016 to December 31, 2019, the date by which the association that has not voted to forego the retrofitting requirement must initiate an application for a building permit with the local government which demonstrates that the association will become compliant; and
 - From December 31 to December 31, 2021, the date by which the association must become compliant.
- Permits an association to use electronic voting in a vote to forego the retrofitting requirement.
- If there has been a previous vote to forego retrofitting, permits the board, by a majority affirmative vote, to call a unit owner meeting for the purpose of holding a subsequent vote to forego retrofitting. Current law requires a petition of 10 percent of unit owners to call a unit owner meeting for the purpose of a subsequent to vote for retrofitting.
- Provides that failure to report a membership vote or the recording of a certificate does not invalidate an otherwise valid opt-out vote.

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

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:

Condominium and cooperative associations may be able to avoid the costs of retrofitting a building with a fire-sprinkler system or other life safety system. In a report published in 2009, the Department of Business and Professional Regulation presented the estimated per-unit cost of retrofitting a sample of condominium buildings from Clearwater to the Keys. The per-unit cost varied widely, from \$595 to \$8,633. The factors said to account for this variation included the extent of sprinkler coverage in the building, the age of the building, the size and number of the units, and the type of construction.³⁴

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends ss. 718.112(2)(1) and 719.1055(5)(a)1., F.S., relating to condominium and cooperative associations, respectively, to require the certificate evidencing compliance with applicable fire and life safety requirements be made by a licensed professional engineer instead of by a licensed electrical contractor or electrician. It is not clear whether an association needs to obtain a new certificate of compliance from a licensed professional engineer if it has previously obtained one from a licensed electrical contractor or electrician.

³⁴ Department of Business and Professional Regulation, *Condominium Sprinkler Retrofit Report, A Review of Retrofit Costs and the Impact of Retrofitting on Insurance Premiums*, October 2009, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumSprinklerRetrofitReportOctober2009.pdf> (last visited Mar. 10, 2019).

CS/SB 908 by Banking and Insurance Committee and Senator Hooper extends the deadlines for the following actions necessary for existing high-rise residential condominiums to comply with the Florida Fire Prevention Code requirements for fire sprinkler and engineered life safety systems:

- A final fire sprinkler permit application and supporting documents must be submitted to the authority having jurisdiction by July 1, 2020;
- All necessary permits must be obtained by July 1, 2021; and
- Final inspection must be passed by December 31, 2022.

Under CS/SB 908, a residential condominium association that fails to timely comply is subject to a daily fine of \$500. The bill removes the option for a condominium associations to vote to opt out of fire safety requirements.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.112 and 719.1055.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.