

**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.)

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Prepared By: The Professional Staff of the Committee on Innovation, Industry, and Technology

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BILL: SB 1152

INTRODUCER: Senator Pizzo

SUBJECT: Community Association Safety Systems

DATE: March 18, 2019

REVISED: \_\_\_\_\_

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

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**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].”<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>2</sup> The declaration must include the condominium’s bylaws, and the declaration functions as the condominium’s “constitution,” subject to applicable laws.<sup>3</sup> A condominium is administered by a board of directors referred to as a “board of administration.”<sup>4</sup>

#### *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.<sup>5</sup> The cooperative association is the corporation or other legal entity that owns the record interest or leasehold of the cooperative’s property.<sup>6</sup> The cooperative association may assess costs for the maintenance of common elements.<sup>7</sup>

### 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.<sup>8</sup> 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).<sup>9</sup>

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.<sup>10</sup>

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

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

<sup>4</sup> Section 718.103(4), F.S.

<sup>5</sup> See s. 719.103(26), F.S.

<sup>6</sup> Section 719.103(12), F.S.

<sup>7</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>8</sup> Sections 718.112(2)(1) and 719.1055(5)(a)1., F.S.

<sup>9</sup> 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.

<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

### ***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),<sup>13</sup> 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.<sup>14</sup> The State Fire Marshal adopts a new edition of the FFPC every three years.<sup>15</sup>

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.

Each municipality, county, and special district with firesafety responsibilities must enforce the Florida Fire Prevention Code as the minimum firesafety code.<sup>16</sup> However, the local authorities may adopt more stringent firesafety standards, but 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.<sup>17</sup>

### ***Legislative History***

In 2003, the Legislature authorized condominium and cooperative associations to vote, by an affirmative vote of two-thirds of all voting interests, to forego retrofitting of a residential condominium or cooperative with a fire sprinkler system or other engineered life safety system. A high-rise condominium or cooperative building of 75 feet or more in height could not vote to forego retrofitting. Condominium and cooperatives were required to comply with any retrofitting requirements by the end of 2014.<sup>18</sup>

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<sup>11</sup> Sections 718.112(2)(1) and 719.1055(5)(a)1., F.S.

<sup>12</sup> *Id.*

<sup>13</sup> 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).

<sup>14</sup> Fla. Admin. Rule ch. 69A-60 (2018).

<sup>15</sup> Section 633.202(4), F.S.

<sup>16</sup> Section 633.208(2), F.S.

<sup>17</sup> Section 633.208(3), F.S.

<sup>18</sup> See ch. 2003-14, ss. 5-6, Laws of Fla.

### 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.,<sup>19</sup> within the life safety requirements applicable to a residential condominium or cooperative association.

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.
- 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.

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<sup>19</sup> 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.”

**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.<sup>20</sup>

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

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<sup>20</sup> 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).

**VII. Related Issues:**

The bill amends ss. 718.112(2)(l) 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.

**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.