

1 A bill to be entitled
 2 An act relating to the investment of condominium
 3 association funds; amending s. 718.111, F.S.;
 4 providing and revising condominium association
 5 recordkeeping requirements; providing alternative
 6 methods and requirements for the investment of
 7 association funds; amending s. 718.112, F.S.;
 8 providing how earnings, rather than interest, accruing
 9 on reserve funds may be used; conforming provisions to
 10 changes made by the act; amending s. 718.3026, F.S.;
 11 excluding contracts for registered investment advisor
 12 services from certain requirements; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

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 17 Section 1. Paragraph (a) of subsection (12) of section
 18 718.111, Florida Statutes, is amended, and subsection (16) is
 19 added to that section, to read:

20 718.111 The association.—

21 (12) OFFICIAL RECORDS.—

22 (a) From the inception of the association, the association
 23 shall maintain each of the following items, if applicable, which
 24 constitutes the official records of the association:

25 1. A copy of the plans, permits, warranties, and other

26 items provided by the developer pursuant to s. 718.301(4).

27 2. A copy ~~photocopy~~ of the recorded declaration of
28 condominium of each condominium operated by the association and
29 each amendment to each declaration.

30 3. A copy ~~photocopy~~ of the recorded bylaws of the
31 association and each amendment to the bylaws.

32 4. A certified copy of the articles of incorporation of
33 the association, or a copy of the other documents creating the
34 association if the association is not incorporated, and each
35 amendment thereto.

36 5. A copy of the current rules of the association.

37 6. A book or books that contain the minutes of all
38 meetings of the association, the board of administration, and
39 the unit owners.

40 7. A current roster of all unit owners and their mailing
41 addresses, unit identifications, voting certifications, and, if
42 known, telephone numbers. The association shall also maintain
43 the e-mail addresses and facsimile numbers of unit owners
44 consenting to receive notice by electronic transmission. The e-
45 mail addresses and facsimile numbers are not accessible to unit
46 owners if consent to receive notice by electronic transmission
47 is not provided in accordance with sub-subparagraph (c)3.e.
48 However, the association is not liable for an inadvertent
49 disclosure of the e-mail address or facsimile number for
50 receiving electronic transmission of notices.

51 8. All current insurance policies of the association and
52 condominiums operated by the association.

53 9. A current copy of any management agreement, lease, or
54 other contract to which the association is a party or under
55 which the association or the unit owners have an obligation or
56 responsibility.

57 10. Bills of sale or transfer for all property owned by
58 the association.

59 11. Accounting records for the association and separate
60 accounting records for each condominium that the association
61 operates. Any person who knowingly or intentionally defaces or
62 destroys such records, or who knowingly or intentionally fails
63 to create or maintain such records, with the intent of causing
64 harm to the association or one or more of its members, is
65 personally subject to a civil penalty pursuant to s.
66 718.501(1)(d). The accounting records must include, but are not
67 limited to:

68 a. Accurate, itemized, and detailed records of all
69 receipts and expenditures.

70 b. A current account and a monthly, bimonthly, or
71 quarterly statement of the account for each unit designating the
72 name of the unit owner, the due date and amount of each
73 assessment, the amount paid on the account, and the balance due.

74 c. All audits, reviews, accounting statements, and
75 financial reports of the association or condominium.

76 d. All contracts for work to be performed. Bids for work
 77 to be performed are also considered official records and must be
 78 maintained by the association.

79 12. Ballots, sign-in sheets, voting proxies, and all other
 80 papers and electronic records relating to voting by unit owners,
 81 which must be maintained for 1 year from the date of the
 82 election, vote, or meeting to which the document relates,
 83 notwithstanding paragraph (b).

84 13. All rental records if the association is acting as
 85 agent for the rental of condominium units.

86 14. A copy of the current question and answer sheet as
 87 described in s. 718.504.

88 ~~15. All other written records of the association not~~
 89 ~~specifically included in the foregoing which are related to the~~
 90 ~~operation of the association.~~

91 15.16. A copy of the inspection report as described in s.
 92 718.301(4)(p).

93 16.17. Bids for materials, equipment, or services.

94 17. A copy of the written investment policy adopted under
 95 paragraph (16)(c).

96 18. A copy of all other written records of the association
 97 not specifically included in the foregoing which are related to
 98 the operation of the association.

99 (16) INVESTMENT OF ASSOCIATION FUNDS.—

100 (a) The board, in fulfilling its duty to manage operating

101 and reserve funds of the association, must use best efforts to
102 make prudent investment decisions that carefully consider risk
103 and return and must keep all association funds fully invested or
104 deposited in order to maximize returns on the funds as provided
105 in this subsection.

106 (b) Unless otherwise prohibited in the declaration, and in
107 accordance with s. 718.112(2)(f), an association, including a
108 multicondominium association, may invest its funds in one or any
109 combination of depository accounts described in s. 215.47(1)(h);
110 however, the depository account balance at an institution may
111 not exceed the amount of insurance per account that is provided
112 by the Federal Government, or an agency thereof, or as otherwise
113 available. If an association chooses to invest funds in any
114 other form of investment products outside of a depository
115 account described in s. 215.47(1)(h), the association must meet
116 the requirements of paragraph (c).

117 (c)1. If an association chooses to not invest funds in
118 accordance with paragraph (b), the board shall annually develop
119 and adopt a written investment policy and select an investment
120 advisor who is registered under s. 517.12 and who is not related
121 by affinity or consanguinity to a board member or unit owner.
122 Any investment fees or commissions may be paid out of the
123 invested reserve funds or the operating funds.

124 2. The investment advisor selected by the board shall
125 invest any funds that are not deposited in accordance with

126 paragraph (b) and shall comply with the prudent investor rule as
127 provided in s. 518.11. The investment advisor shall act as a
128 fiduciary to the association in compliance with the standards
129 set forth in the Employee Retirement Income Security Act of 1974
130 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with
131 other provisions of law authorizing investments, the investment
132 and fiduciary standards set forth in this paragraph shall
133 prevail.

134 3. Any funds invested under this paragraph must be held in
135 third-party custodial accounts and are subject to insurance
136 coverage by the Securities Investor Protection Corporation in an
137 amount equal to or greater than the assets being held.

138 4. The association shall provide the investment advisor,
139 at least annually, with the association's written investment
140 policy, the most recent reserve study report, or a good faith
141 estimate disclosing the annual amount of reserve funds that
142 would be necessary for the association to fully fund reserves
143 for each reserve item, and the financial reports prepared under
144 subsection (13). The investment advisor shall review these
145 documents annually and provide the association with a portfolio
146 allocation model that is structured to match the association's
147 projected reserve fund and liability liquidity requirements.
148 There must be at least 36 months of projected reserves in cash
149 or cash equivalents available to the association at all times.

150 5. The investment advisor may invest the association's

151 funds in any type of investment necessary to meet the objectives
152 in the written investment policy, except that an association's
153 portfolio may not contain stocks, securities, or other
154 obligations that are prohibited under ss. 215.471, 215.472,
155 215.4725, and 215.473. The investment advisor shall annually
156 provide the association with a certificate of compliance with
157 this subparagraph.

158 6. The investment advisor shall:

159 a. Annually provide the association with a certificate of
160 compliance with this paragraph.

161 b. Submit monthly, quarterly, and annual reports prepared
162 in accordance with investment industry standards to the
163 association.

164 (d) Any principal, earnings, or interest managed under
165 this subsection must be made available free of charge to the
166 association within 15 business days after delivery of the
167 association's written or electronic request for such principal,
168 earnings, or interest.

169 (e) An association shall annually contract with a
170 certified public accountant licensed under chapter 473 to verify
171 the transactions of invested funds and to provide the
172 association with a report of cash receipts and disbursements for
173 the invested funds. If an association comingles its operating
174 and reserve funds under subsection (14), each association
175 investing under this subsection shall receive an accounting for

176 all investment earnings and interest relating to that
177 association.

178 Section 2. Paragraph (f) of subsection (2) of section
179 718.112, Florida Statutes, is amended to read:

180 718.112 Bylaws.—

181 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
182 following and, if they do not do so, shall be deemed to include
183 the following:

184 (f) Annual budget.—

185 1. The proposed annual budget of estimated revenues and
186 expenses must be detailed and must show the amounts budgeted by
187 accounts and expense classifications, including, at a minimum,
188 any applicable expenses listed in s. 718.504(21). A
189 multicondominium association shall adopt a separate budget of
190 common expenses for each condominium the association operates
191 and shall adopt a separate budget of common expenses for the
192 association. In addition, if the association maintains limited
193 common elements with the cost to be shared only by those
194 entitled to use the limited common elements as provided for in
195 s. 718.113(1), the budget or a schedule attached to it must show
196 the amount budgeted for this maintenance. If, after turnover of
197 control of the association to the unit owners, any of the
198 expenses listed in s. 718.504(21) are not applicable, they need
199 not be listed.

200 2.a. In addition to annual operating expenses, the budget

201 must include reserve accounts for capital expenditures and
 202 deferred maintenance. These accounts must include, but are not
 203 limited to, roof replacement, building painting, and pavement
 204 resurfacing, regardless of the amount of deferred maintenance
 205 expense or replacement cost, and any other item that has a
 206 deferred maintenance expense or replacement cost that exceeds
 207 \$10,000. The amount to be reserved must be computed using a
 208 formula based upon estimated remaining useful life and estimated
 209 replacement cost or deferred maintenance expense of each reserve
 210 item. The association may adjust replacement reserve assessments
 211 annually to take into account any changes in estimates or
 212 extension of the useful life of a reserve item caused by
 213 deferred maintenance. This subsection does not apply to an
 214 adopted budget in which the members of an association have
 215 determined, by a majority vote at a duly called meeting of the
 216 association, to provide no reserves or less reserves than
 217 required by this subsection.

218 b. Before turnover of control of an association by a
 219 developer to unit owners other than a developer under ~~pursuant~~
 220 ~~to~~ s. 718.301, the developer may vote the voting interests
 221 allocated to its units to waive the reserves or reduce the
 222 funding of reserves through the period expiring at the end of
 223 the second fiscal year after the fiscal year in which the
 224 certificate of a surveyor and mapper is recorded under ~~pursuant~~
 225 ~~to~~ s. 718.104(4)(e) or an instrument that transfers title to a

226 unit in the condominium which is not accompanied by a recorded
227 assignment of developer rights in favor of the grantee of such
228 unit is recorded, whichever occurs first, after which time
229 reserves may be waived or reduced only upon the vote of a
230 majority of all nondeveloper voting interests voting in person
231 or by limited proxy at a duly called meeting of the association.
232 If a meeting of the unit owners has been called to determine
233 whether to waive or reduce the funding of reserves and ~~no~~ such
234 result is not achieved or a quorum is not attained, the reserves
235 included in the budget shall go into effect. After the turnover,
236 the developer may vote its voting interest to waive or reduce
237 the funding of reserves.

238 3. Reserve funds and any earnings ~~interest~~ accruing
239 thereon shall remain in the reserve account or accounts, and may
240 be used only for authorized reserve expenditures unless their
241 use for other purposes, including investing funds under s.
242 718.111(16), is approved in advance by a majority vote at a duly
243 called meeting of the association. Before turnover of control of
244 an association by a developer to unit owners other than the
245 developer under ~~pursuant to~~ s. 718.301, the developer-controlled
246 association may not vote to use reserves for purposes other than
247 those for which they were intended, including investing funds
248 under s. 718.111(16), without the approval of a majority of all
249 nondeveloper voting interests, voting in person or by limited
250 proxy at a duly called meeting of the association.

251 4. The only voting interests that are eligible to vote on
252 questions that involve waiving or reducing the funding of
253 reserves, or using existing reserve funds for purposes other
254 than purposes for which the reserves were intended, including
255 investing funds under s. 718.111(16), are the voting interests
256 of the units subject to assessment to fund the reserves in
257 question. Proxy questions relating to waiving or reducing the
258 funding of reserves or using existing reserve funds for purposes
259 other than purposes for which the reserves were intended, including investing funds under s. 718.111(16), must contain the
260 following statement in capitalized, bold letters in a font size
261 larger than any other used on the face of the proxy ballot:
262 WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING
263 ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER
264 LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS
265 REGARDING THOSE ITEMS.

267 Section 3. Paragraph (a) of subsection (2) of section
268 718.3026, Florida Statutes, is amended to read:

269 718.3026 Contracts for products and services; in writing;
270 bids; exceptions.—Associations with 10 or fewer units may opt
271 out of the provisions of this section if two-thirds of the unit
272 owners vote to do so, which opt-out may be accomplished by a
273 proxy specifically setting forth the exception from this
274 section.

275 (2) (a) Notwithstanding the foregoing, contracts with

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276 employees of the association, and contracts for attorney,
277 accountant, architect, community association manager, timeshare
278 management firm, engineering, registered investment advisor, and
279 landscape architect services are not subject to ~~the provisions~~
280 ~~of~~ this section.

281 Section 4. This act shall take effect July 1, 2021.