

Some Points on SB 154 to Consider When Contacting Senators/Staff

Stephen Gott has had contact with a Senator's aide in Tallahassee who has provided him with information about a committee meeting set for Tues, 2/21 at 1pm. She is encouraging him to get as many voters as possible to email the addresses provided below before the 2/21 meeting. The aides will see that their Senators are informed prior to the Tuesday meeting. We're asking all Forum members to spend about 20 to 30 minutes doing some cutting & pasting – or come up with your own words – and send emails to all the addresses listed below. We need to let them all know in no uncertain terms that if this glitch bill stands, it will ruin the condo market in Florida. The bill is SB-154 -

<https://flsenate.gov/Session/Bill/2023/154/BillText/Filed/PDF> - The condo bill will be discussed live at 1pm Tuesday 2/21/23 go to <https://thefloridachannel.org/> click the live button then click on SB 154 meeting.

Suggested by Stephen Gott, Gardenia Condos

We have major issues with this bill. I have outlined some of the key problems. This bill will cause foreclosures, bankruptcies, death of the condo market etc. This is not an exaggeration, it's a certainty.

- 1. Holding reserves for nonstructural items which have no structural significance will be a huge financial burden. Why does the state control painting, pavement, windows, even roof if it is not affecting structural integrity? Holding reserves for this is arbitrary and very expensive to fixed income or retired people.*
- 2. An engineer may use subjective interpretation to determine the reserve necessity for the building. For example, if the roof is dirty does that mean it has a 5 year life or 20 year.*
- 3. The most onerous element is the foundation. If there are no visual issues then there should be no reserves. replacing the foundation may cost as much as the building if you have to reserve for it.*
- 4. Most condos create one time assessments for maintenance issues. To create additional reserves for completed work has a double financial effect.*
- 5. The roof reserve is not a government issue. The condos have always fixed it and can easily do it with repair not replacement which can be over \$250,000*
- 6. Most of the condo owners will file for bankruptcy with new significant ongoing reserves not anticipated in their budget with a majority of owners on a fixed income. This would be for non-urgent nonstructural issues.*
- 7. The condo market will die. A reserve report will go to the new buyer showing they have in addition to a mortgage they have an annual \$20,000 assessment for example for pavement, windows, waterproofing, painting etc. NON STRUCTURAL. Owners would need prices to drop to accommodate these reserves.*
- 8. Each building should fix structural issues immediately. no reserves. Any item not in need of repair should not have a reserve. No individual engineer is equipped with the appropriate experience to determine the life of an element. Are windows good for 5 years or 100 years? That number will determine foreclosure or not for the condo market.*

Suggested by Chuck Lukas, Somerset Bay

I think pressuring our elected representatives is still the best tool available to citizens to bring about change. Condo owners must make up a significant enough percentage of voters in the state for representatives to pay attention to our wishes! I also noticed there are several other entities mentioned that have been given directives and authority by this bill: licensed architects and engineers; local enforcement agencies; building departments; municipal governing bodies; Florida Building Commission; Division of Florida Condominiums, Timeshares, and Mobile Homes; Department of Business and Professional Regulation...Have attempts been made to reach out to these groups and see where they stand on the implementation of this law? Do any of these groups or agencies think it's even feasible for them to handle the sheer volume of work generated by this? As just a small example; I know it can take months to get a permit for a simple construction project because most building departments are overwhelmed and under staffed....how are they going to be able to take on this additional workload? These agencies may just be our allies in this based on the potential overload they will get!! Was FUNDING for these agencies considered at all? This will greatly expand their workload; does the legislature expect there to be no additional costs associated with this? Are we as Condo owners expected to brunt the cost of enforcement as well?

Talking Points from Greg Garver, Golden Bay

The majority of condominiums are safe in Florida. I cannot recall a collapse since that of the Harbour Cay Condominium in Cocoa, FL in 1981 killing 11 construction workers. That building was under construction and caused by structural engineering design errors and improper application of tension rod "bridges" during floor concrete pours.

Government Has Not Considered Impact on Diligent Condominium Boards

The majority of condominium association boards in Florida are made of people that want to keep their condominiums safe and viable while still not becoming an undue financial burden on all owners. Other condominium association boards such as that of Champlain Towers favors financial consideration over safety and 98 people paid for it with their lives. Most condominium association boards are made up of everyday people that are also owners. They are typically intelligent and reasonable people capable of weighing financial and safety considerations when making decisions that affect the integrity of the building. Generally, they are not lawyers and do not have the education and experience to deal with, what is increasingly becoming a complex legal environment where condominiums are concerned. The 2000 (when our condominium was built) version of the FL Statue Chapter 718 - CONDOMINIUMS contained over 51,000 words. That same statute as of 1/27/23 now contains over 85,000 words, a 66% increase. And this does not take into account referenced other statutes such as Section 553.899 (Florida Building Commission inspections) and Section 468.4334 (Community Association Managers). It is unreasonable to assume that the layperson association board members be able to keep up with and be able to interpret the legal requirements of all of this legislation. Property management hired by many association boards typically assign an individual property manager to multiple properties assuming so many hours per month per property per manager is required. It is not reasonable to assume that an individual property manager can also apply all of this legislation to multiple properties, so much of the responsibility fall back on the association board, lest property management fees be increased to cover more hours and legal assistance.

Florida Unprepared to Meet Inspection and Reserve Analysis Engineering Demand

There is no apparent evidence that Florida legislators have taken into consideration the substantial needed increase of firms and qualified people to meet the demand of structural inspections and structural integrity

reserve studies. The shortage of these types of qualified people will leave association boards, as deadlines approach, scrambling to locate qualified firms and wasting significant time in trying to make arrangements until the Florida government realizes the shortage and begins slipping deadlines. These types of "realizations" typically take months and even years.

Favors Insurance Industry

Senate Bill 4-D - Building Safety legislation rushed through.

Potentially reduces risk (no real evidence that it does) to insurance industry long before premiums go down and profits are reaped.

Many Penalized as a Result of Neglect by a Few

Just because reserves may not be fully funded by a condominium association does not mean it will someday collapse. Our association has spent over \$600,000 in the past 5 years in replacing old railings, installing hurricane shutters, and resurfacing walkways. And there is more coming. These are funded partially from reserves and partially from special assessment. Partially funding reserves is an individual owners' decision taking into account their own personal financial situation including their financial ability to fully fund reserves or partially fund and supplement with special assessments. Yes, there are people that favor partially funding and when a special assessment is called for to supplement, the special assessment payment is not something that comes easy for them because that have not saved for the difference funded by the special assessment even though the total amount required, for say a roof replacement, has been disclosed every year when the annual budget is presented to them and voted on. The Champlain Towers chose not to save in any manner to pay for building maintenance that would prevent the building's collapse.

Safety City's Responsibility or Not?

Why did the city of Surfside, Florida government permit the continued occupation of the Champlain Towers South Tower built in 1981, after the building's condominium association received an engineering report so critical of the building's structural deficiencies? If the city did not receive the report, then maybe the state's legal solution is to require a copy of all engineering reports of this type be provided cities and cities take "safety" action when warranted. Cities require copies of other types of document such as Certificates of Insurance by building contractors. Why not structural engineering reports? Our city's fire department is currently on our condominium association's butt (I know, not yet as of this writing.) for not having a 3 foot open space around our fire control box in the lobby of our 24 unit, 4 story (8 units per floor top 3 floors) condominium building. It seems a 25 lb chair is too heavy to be slid out of the way. City building departments are typically responsible for approving occupancy for new and renovated buildings. Why not occupied multi-family buildings that may be at risk? In the case of Champlain Towers, the city could have condemned the building. Harsh? Yes, but as harsh as 98 dead as result of continued occupation of structurally unsound building? Would it be a city's fear of the legal battle by condemning the building; fear of not being re-elected; fear of having to deal with all the displaced occupants and the shrill protests from them, their relatives, and their friends; or all of the above.

The rest of Florida is not responsible for the neglect of a few unless Florida Government is in just another way, joining the country's socialist movement, of which unanimously passed Senate Bill 4-D is just another step towards implementation. All paying for the neglect of a few.

Senate Bill 4-D - Building Safety Lacks "Teeth"

This bill only serves to grow the structural engineering business at the expense of condominium and other multi-family multi story privately owned properties, and community association reserve accounts. If a condominium fails to get inspected, fails inspection, fails to obtain structural integrity reserve studies, and/or fails to set up reserves per a structural integrity reserve study, at what point and by what law does any level of

Florida government step in and condemn the building in question and displace the occupants before the building becomes another Champlain Towers South Tower? FL DBPR 61B could be updated with fines for neglecting any of the preceding "failures", although FL Senate Bill 4D did not provide for this. FL Senate Bill 4D does not establish any enforcement action available for neglecting the preceding "failures". And fine payment may be unlikely if a community association is in such dire financial position that it cannot meet the inspection requirement, reserve study requirement, and make necessary repairs. Should FL DBPR 61B be updated with fines for neglecting any of the preceding "failures", what is the enforcement? Interest, more fines, etc.? Board members resign and can't be replaced? When would the Florida Government condemn the building?

Heavy Handed Fiduciary Responsibility

FL Statute 718.112(2)(g)4. references FL Statute 718.111(1)(d) which in turn invokes FL Statute 617.0834 which makes officers and directors personally liable for "Recklessness or an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." The board of directors of Champlain Towers met the omission criteria prior to the Champlain Towers collapse, and yet nothing was done. Are they dead? How does Senate Bill 4-D prevent this from reoccurring if all the Senate Bill 4-D attempts to implement, is ultimately ignored by a board of directors? And for board of directors that attempt to following the law and something still happens, they are still subject to civil suit and the associated personal expense of defense. This heavy handed fiduciary responsibility will also ultimately discourage those that are familiar with this law's ramifications from being on a board of directors. It may well also bring about frivolous civil suits by the unscrupulous and again, the associated personal expense of defense.

Structural Integrity Reserve Study - 718.112(2)(f)2.a. - How Much of a Reserve?

Sitting in a few meetings, there are some that interpret this to potentially require reserve amounts that are sufficient to replace an entire building, major structural component by major structural component, which would in total, be an amount that exceeds the cost of demolishing the entire building and putting an identical structure up in its place. Analogous to replacing a car, part by part, which everyone knows would far exceed the cost of purchasing the entire whole car. This ambiguous definition worries a lot of owners and how much they are going to have to contribute over multiple years and never see the benefit of their contribution, because it is a "just in case" situation. It will also tend to substantially drive up the price of units due to the additional amounts for reserves, an owner may have been forced to contribute. Astute buyers may take into account reserve amounts when negotiating a price, however, those amounts may now be substantially more due to this new law.

What We Are Asking You to Do

Advocate the scaling back of much of this law including mandatory fully funded structural integrity item reserves.

Place responsibility on the cities through state legislation that requires a city to be copied on all structural engineering reports. And when warranted, which means failure to make structurally essential repairs, the city may condemn the building for occupancy.

All condominiums, at least in our city, are required to have an annual fire inspection. During fire inspection, train fire inspectors to notice visible possible structural integrity issues and report them to the city. The city then determines the need for a structural engineering study, regardless of building age. The city then notifies the condominium of the requirement for a study and warns all building occupants of the future possibility of building condemnation and occupant displacement.

(Although not familiar with Surfside, Florida local government fire inspection regulations or even Florida fire inspection regulations relative to condominiums, did Surfside, Florida fire inspectors not notice anything that needed to be reported outside the scope of fire inspection?