SB 4D update / SB 154 Summary as of February 16, 2023

Senate Bill 154 was filed in the Senate on Friday, February 10, with proposed amendments to the laws enacted pursuant to last year's Senate Bill 4-D. There is no House companion yet. The bill has been referred to 2 committees so far, and it is scheduled to be discussed by the Regulated Industries Committee on February 21, 2023. Please note that there may be amendments as the bill goes through the legislative process. Here's a summary of items of note in the bill pertaining to condominiums:

- The bill clarifies that milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge of the work and reports signed and sealed by the appropriate qualified team member. Thus, it appears that not all team members need to be licensed.
- The local enforcement agency may extend the milestone inspection deadline upon a showing of good cause that the inspection cannot be timely completed if the owner has entered into a contract to perform the milestone inspection and the inspection cannot reasonably be completed before the deadline, or other circumstances that justify an extension.
- If a phase 2 inspection is required, within 180 days after submitting a phase 1 inspection report the architect or engineer performing the phase 2 inspection must submit a phase 2 progress report to the local enforcement agency with a timeline for completion of the phase 2 inspection.
- By December 31, 2024, the Florida Building Commission must adopt rules to establish a building safety program for the implementation of the section requiring milestone inspections. The building inspection program must include inspection criteria, testing protocols, standardized inspection and reporting forms that are adaptable to an electronic format, and record maintenance requirements for the local authority.
- The bill includes the following definition of "alternative funding method": a method approved by the Division for funding the capital expenditures and deferred maintenance obligations for a multicondominium association which may reasonably be expected to fully satisfy the association's reserve funding obligations, including, but not limited to, the allocation of funds in the annual operating budget.
- For budgets adopted before December 31, 2024, the members of a unit-owner-controlled association may determine, by a majority vote of all the voting interests of the association, voting in person or by proxy, to waive reserves or provide less reserves than required by the structural integrity reserve study. On or after December 31, 2024, members of a unit-owner-controlled association may not vote to waive reserves or provide less reserves than required by the structural integrity reserve study except that members of an association operating a multicondominium may determine to provide no reserves or less reserves if an alternative funding method has been approved by the Division.
- Reserve funds may only be used for authorized reserve expenditures unless use for other purposes is approved in advance by a majority vote of all the voting interests of the association, voting in person or by proxy. For budgets adopted on or after December 31, 2024, associations cannot vote to use reserve funds required by a structural integrity reserve study for any other purpose.
- Floors were removed from the lists of components that are to be included in the structural integrity reserve study. All other components identified in SB 4-D remain on the list and they are: roof, load-bearing walls or other primary structural members, foundation, fireproofing and fire protection systems, plumbing, electrical systems, waterproofing and exterior painting, windows, and any other item that has a deferred maintenance expense or replacement costs

that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items previously listed.

- The bill clarifies that a structural integrity reserve study is based on a visual inspection of the condominium property. The bill also clarifies that the SIRS may be performed by any person qualified to perform the SIRS but the visual inspection portion of the reserve study must be performed or verified by an engineer licensed in Florida, an architect licensed in Florida, or a person who is certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts. Also, the SIRS must identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining use life of the item.
- The SIRS may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost or deferred maintenance expense cannot be determined, or the SIRS may recommend a deferred maintenance expense amount for such items.
- Amendments to the alternative dispute resolution section of Chapter 718, Florida Statutes (S. 718.1255) are proposed to take effect as of July 1, 2027. These amendments include adding the following to the definition of "dispute": failure to obtain the milestone inspection, failure to obtain a SIRS, failure to fund reserves required by the SIRS, and failure to make or provide necessary maintenance or repairs of condominium property recommended by a milestone inspection or a SIRS. In addition, these newly defined disputes are to be addressed in pre-suit mediation (and then circuit court if not resolved in mediation) rather than nonbinding arbitration.
- If the association is required to have completed a milestone inspection or a SIRS and the association has failed to complete one or both, each contract entered into after December 31, 2024, for the sale of a unit must contain a statement indicating that the association is required to have a milestone inspection and/or a SIRS and has failed to completed one or both. If the association is not required to complete a milestone inspection or a SIRS, each contract entered into after December 31, 2024, for the sale of a unit must contain a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study.
- If the association is required to have completed a milestone inspection and/or a SIRS, each contract entered into after December 31, 2024, for the resale of a unit shall contain language acknowledging the buyer's receipt of the milestone inspection and SIRS. In addition, contracts must include a clause providing that buyers can void the contract within 3 business days (for non-developer sales) of receiving the milestone inspection report and most recent SIRS. The voidability right is not waivable. Buyers may also extend the closing date by up to 3 business days (for non-developer sales) after receiving the milestone inspection report and most recent SIRS. Contracts that don't contain these required provisions are voidable by the buyer prior to closing.
- The bill authorizes the Division to adopt rules to implement these changes to Chapter 718.
- Except as otherwise noted, the bill will take effect upon becoming a law.