

Condo Reform Laws, Part II – SB 154 update and unanswered questions

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In May 2022, the Florida Legislature convened for a Special Session and brought about sweeping changes to condominium and cooperative associations' approach to the long-term repair and replacement of common properties with the passage of Senate Bill 4-D (SB 4D). You can find our first article on this subject in the Summer 2022 issue of *Florida CPA Today*.¹

Since then, several interested parties – including the FICPA's CIRA Committee – have raised concerns about certain provisions of SB 4D, resulting in the introduction of Senate Bill 154 (SB 154) during the 2023 Legislative Session. SB 154 was signed into law by Gov. Ron DeSantis on June 9, 2023. Practitioners who serve affected community associations need to be aware of the new law to help their clients navigate the requirements.

SB 154 addressed many of the concerns raised about SB 4D, but some issues remain unresolved. Major provisions of the new law and some of the unanswered questions are discussed below.

MILESTONE INSPECTIONS

Several changes were made to the requirements of the milestone inspection. SB 154 limited the requirement for a milestone inspection to only residential associations. SB 4D required these inspections to be performed by a licensed engineer or architect; SB 154 relaxes that requirement and allows the inspection to be performed by a "team of professionals," with the final sign-off by an architect or engineer. SB 154 removed a tighter

timeline for coastal communities but allows "local enforcement agencies" to modify the timing of the required inspections, speeding up if needed and allowing extensions for the completion of the inspections for cause.

STRUCTURAL INTEGRITY RESERVE STUDY

SB 4D introduced the requirement for associations with buildings three stories or higher to have a Structural Integrity Reserve Study (SIRS) performed. Like the milestone inspection, SB 154 limited the requirement to include only residential associations. SB 154 also modified the required elements to be considered in the study. It removed floors and foundations but added exterior doors. (See table below.)

Another modification to the required elements in a SIRS concerns items that have a remaining useful life greater than 25 years. Associations don't have to directly reserve for

the replacement cost of these items. Instead, they have to reserve amounts for deferred maintenance for these items. In addition, the definition of three stories would be determined by the Florida Building Code.

One of the more confusing changes made was to the definition of the SIRS and responsible parties. There are several elements involved in the development of any reserve study: a visual inspection of the property, a determination of estimated costs for repair and replacement, an assessment of remaining useful lives of each item, a determination of existing funds restricted for reserves, and a calculation of required reserve funding. SB 154 first states that a SIRS may be performed by "any person qualified to perform such study." Later, it states that the visual inspection must be performed by a licensed engineer or architect or a person certified as a reserve specialist or professional reserve analyst by the

Reserve Items: What changed from SB 4D to SB 154

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| a. Roof. | g. h. Windows and <u>exterior doors</u> . |
| b. <u>Structure, including</u> load-bearing walls and <u>or</u> other primary structural members and primary structural systems as those terms are defined in 2. 627.706. | h. j. Any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g. sub-subparagraphs 1.-j. , as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study. |
| c. Floor. | |
| d. Foundation. | |
| e. Fireproofing and fire protection systems. | |
| d. f. Plumbing. | |
| e. g. Electrical systems. | |
| f. h. Waterproofing and exterior painting. | |

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



Community Associations Institute. While qualifications to perform the visual inspection are clear, the qualifications for performing the rest of the study are not.

RESERVE FUNDING AND ALTERNATE USE

SB 4D introduced a new requirement for associations to maintain and fund the reserves called for in the SIRS. As noted above and in the insert, those reserves are quite specific, and funding of these reserves cannot be waived for budgets adopted on or after Dec. 31, 2024. Of course, most associations will have other types of reserves that need to be maintained. The old laws and rules still apply to these reserves. SB 154 raised the bar for associations to waive or reduce full funding of these reserves or to use these reserves for an alternate purpose. SB 154 did not change the prohibition of waiving the funding or alternate use of SIRS reserves. That said, those options are still available for these other reserves. The previous law allowed waiver, less-than funding or alternate use of reserves with a majority vote of members at a duly called meeting. SB 154 requires the majority of all members – not just those in attendance – for these actions. As a result of the different treatment of SIRS and non-SIRS reserves, it may appear that associations will have two sets of reserves included in their reserve studies.

ALTERNATE RESERVE FUNDING

SB 154 allows an “alternate funding method” for reserves for multicondominium associations operating at least 25 condominiums. This funding method must be approved by the Florida Department of Business and Professional Regulation’s Division of Florida Condominiums, Timeshares, and Mobile Homes (the Division).

ADMINISTRATIVE RULEMAKING

One of the more important provisions of SB 154 is the directive from the Legislature to the Division to promulgate rules to implement SB 154. State agencies are often given rulemaking authority with respect to certain areas of the law they regulate, but SB 4D did not provide for this agency rulemaking authority.

The FICPA has a long-standing relationship with the Division, and the CIRA Committee regularly meets with representatives of the Division on issues of interest such as rulemaking. We anticipate FICPA’s continued communication with the Division as this rulemaking process moves forward.

WHAT’S NEXT?

With the Division’s ability to promulgate rules to implement SB 154, we see great opportunity to clarify any ambiguities. We are likewise seeking clarification on the topics below, originally identified in our discussion of SB 4D last summer:

1. Separating required reserves that exist in current pooled funds:

Many associations maintain some of the required SIRS reserves in existing pooled accounts. These associations need guidance on a specific mathematical approach to separate those reserves from the pool.

2. Frequency of SIRS and other types of reserve studies:

SIRS are required at least every 10 years. Associations need clarification in determining what type of reserve studies can be prepared and used in their funding plans between those dates.

3. Inconsistency in Full Impact of Effective Date of SIRS:

There seems to be inconsistent language as to the effective date of implementing SIRS.

Dave Hochsprung and Guy Strum are members of the FICPA’s CIRA Committee; Strum is the Chair of the FICPA’s CIRA Legislative Subcommittee and the State Legislative Policy Committee.

The CIRA Committee assists the Governmental Affairs team with technical support and feedback on pending legislation. It will continue to monitor activities related to SB 154 or legislation proposed during the 2024 Legislative Session and work with the Division to clarify some of the issues noted here.

(i) www.ficpa.org/cira-fct-summer-22