Sponsored by:
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SYNOPSIS
Concerns structural integrity regulations for certain residential buildings.

CURRENT VERSION OF TEXT
As introduced.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) The Legislature finds and declares that:
   a. The importance of the structural integrity of residential buildings in New Jersey has become a growing concern for many, especially in the wake of the tragic collapse of a high-rise, multifamily housing structure in Florida.
   b. In light of these growing concerns, it is appropriate for the Legislature to put in place appropriate procedures for inspecting, evaluating and maintaining the structural integrity of certain residential housing structures within this State.

2. (New section) As used in this P.L. , c. (C. ) (pending before the Legislature as this bill):
   “Bureau” means the Bureau of Housing Inspection in the Department of Community Affairs.
   “Corrective maintenance” means maintenance to be undertaken following the detection of deterioration of the primary load bearing system with the goal of remediating the condition reported by the structural inspector.
   “Covered building” means a residential building that is categorized as use group R-1 or use group R-2, as those terms are defined in N.J.A.C.5:70-1.5, having load bearing concrete, masonry, steel, hybrid structure including, but not limited to, heavy timber, and a building with podium decks.
   “Covered building owner” means the owner of a covered building, whose name appears of record with the county clerk or register, or the association of a common interest community.
   “Primary load bearing system” means the assemblage of structural components within a building that by contiguous interconnection form a path by which external and internal forces applied to the building are delivered to the ground.
   “Structural inspector” means:
   (1) a construction official, as that term is used in section 8 of P.L.1975, c.217 (C.52:27D-126), who is also an engineer licensed by the State;
   (2) an employee of the bureau who is also an engineer licensed by the State; or
   (3) an engineer licensed by the State with whom the covered building owner, enforcing agency, or bureau contracts to perform inspections of covered buildings under sections 3 and 4 of P.L. ,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
c. (C. and C.) (pending before the Legislature as this bill).

3. (New section) a. When a construction application that proposes to create, amend, or modify the primary load bearing system of a covered building is filed with the enforcing agency, prior to issuing a construction permit, the enforcing agency shall consult with a structural inspector chosen by the enforcing agency or covered building owner and set forth an inspection schedule to confirm that the primary load bearing system conforms to the building plans submitted by the applicant. Inspection, however, shall not be required pursuant to this subsection as a condition of construction permit issuance if the structural inspector determines that the building is not a covered building.

b. Inspections conducted pursuant to the schedule set forth in subsection a. of this section shall be performed under the direction of a construction structural inspector. The construction structural inspector may be assisted by other licensed professionals qualified in various special disciplines, including but not limited to geotechnical and civil engineering practices, as needed to conduct the structural inspections required by this section.

c. In conducting inspections pursuant to subsections a. and b. of this section, the construction structural inspector shall review the construction plans submitted with the construction application, and issue a written report determining whether the primary load bearing system conforms to the building plans. If the construction structural inspector determines that the primary load bearing system is not in conformance with the building plans, the applicant shall provide additional plans which show conformance with a modification to the primary load bearing system. No certificate of occupancy shall be issued pursuant to section 15 of P.L.1975, c.217 (C.52:27D-133), until the structural inspector issues a written report which confirms that the construction of the primary load bearing system of the building is in conformance with the approved construction plans.

d. The creation of, or repair, renovation, alteration, or modification to the primary load bearing system of a covered building required pursuant to any inspection shall be conducted by a construction structural inspector prior to the issuance of a certificate of occupancy required pursuant to section 15 of P.L.1975, c.217 (C.52:27D-133).

e. Any additional cost to the enforcing agency incurred as a result of inspections made under this section shall be recovered through a fee associated with the construction application of a covered building which shall be paid by the covered building owner during the application process.

f. The commissioner shall adopt rules and regulations, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968,
c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this section.

4. (New section) a. Following the issuance of a certificate of occupancy, an initial structural inspection of the building components forming the primary load bearing system of a covered building shall be undertaken by a post-occupancy structural inspector retained by the covered building owner within the earlier of: (1) 15 years of the date on which the covered building receives a certificate of occupancy pursuant to section 15 of P.L.1975, c.217 (C.52:27D-133); or (2) 60 days after observable damage to the primary load bearing system. If a covered building has received a certificate of occupancy pursuant to section 15 of P.L.1975, c.217 (C.52:27D-133) prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), then an initial structural inspection shall be undertaken by a structural inspector within two years of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. After the post-occupancy structural inspector has performed an inspection pursuant to subsection a. of this section, the post-occupancy structural inspector shall issue a written report describing the condition of the primary load bearing system. The post-occupancy structural inspection report shall:

(1) set forth with specificity any required maintenance or repairs needed by the primary load bearing system;

(2) determine when the next inspection of the primary load bearing system shall be performed, but in no event shall a secondary inspection occur more than the earlier of: (a) 10 years after the initial inspection has taken place; or (b) not more than 60 days after there is observable damage to the primary load bearing system;

(3) be provided to the municipal appointing authority, the construction official and the enforcing agency;

(4) be prepared in accordance with the protocol established by the American Society of Civil Engineers, for the structural condition assessment of a covered building or a similar protocol by another nationally recognized structural engineering organization; and

(5) provide any other information or guidance necessary to maintain the structural integrity of a covered building.

c. If the structural inspector’s report created pursuant to subsection b. of this section finds that corrective maintenance of the primary load bearing system is required, the report shall specify with reasonable detail the required corrective maintenance.

d. Notwithstanding the structural inspector’s initial inspection and report undertaken pursuant to subsections a. through c. of this section, subsequent structural inspections and reports shall be
provided for as set forth by the structural inspector’s preceding report as follows:

(1) The structural inspector will determine a reasonable period of time within which the next inspection shall take place provided, however, that any subsequent inspection under this paragraph shall not take place:

(a) more than 10 years after a preceding inspection during the first 20 years following issuance of a certificate of occupancy of a covered building; or

(b) more than five years after a preceding inspection if the covered building is more than 20 years old.

(2) The structural inspector shall review the preceding inspection report prior to undertaking subsequent inspection of the covered building. After the structural inspector completes this review and inspection, the structural inspector will then issue a subsequent inspection report which shall:

(a) make note of any new or progressive deterioration;

(b) set forth the covered maintenance required to address any new or progressive deterioration; and

(c) be provided to the covered building owner, who shall undertake measures necessary to effectuate the covered maintenance, including, but not limited to, engaging the services of an architect or engineer licensed by the State and qualified in structural repairs or maintenance to create plans or specifications to implement the covered maintenance. The covered building owner shall cause any plans or specifications created pursuant to this subparagraph to be filed with the municipal appointing authority or enforcing agency.

(3) If the post-occupancy structural inspector’s inspection finds that there is no need for corrective maintenance, the written report shall be filed with the enforcing agency or municipal appointing authority.

(4) Any written reports issued by the post-occupancy structural inspector pursuant to this section shall be provided to the covered building’s owner and shall be made available to any resident of a covered building upon request.

e. Inspections conducted pursuant to this section may be conducted in conjunction with other required inspections, including but not limited to inspections required pursuant to the "Hotel and Multiple Dwelling Law," P.L.1967, c.76 (C.55:13A-1 et seq.).

5. (New section) A construction or post-occupancy structural inspector who performs the duties set forth in sections 3 and 4 of P.L. , c. (C. and C. ) (pending before the Legislature as this bill) in good faith and pursuant to the protocols adopted by the American Society of Civil Engineers, or similar protocols by another nationally recognized structural engineering association,
shall not incur any civil liability for injury associated with any
inspection undertaken by the structural inspector.

6. Section 6 of P.L.1977, c. 419 (C.45:22A-26) is amended to
read:

6. a. Unless otherwise exempted:

(1) No developer may offer or dispose of any interest in a
planned real estate development, prior to the registration of such
development with the agency.

(2) No developer may dispose of any lot, parcel, unit, or interest
in a planned real estate development, unless he: delivers to the
purchaser a current public offering statement, on or before the
contract date of such disposition.

b. Any contract or agreement for the purchase of any parcel, lot,
unit, or interest in a planned real estate development may be
canceled without cause by the purchaser by sending or delivering
written notice of cancellation by midnight of the seventh calendar
day following the day on which the purchaser has executed such
contract or agreement. Every such contract or agreement shall
contain, in writing, the following notice in 10-point bold type or
larger, directly above the space provided for the signature of the
purchaser:

"NOTICE TO THE PURCHASER: you have the right to cancel
this contract by sending or delivering written notice of cancellation
to the developer by midnight of the seventh calendar day following
the day on which it was executed. Such cancellation is without
penalty, and any deposit made by you shall be promptly refunded in
its entirety."

c. Notice as required in subsection b. shall, in addition to all
other requirements, be conspicuously located and simply stated in
the public offering statement.

d. The developer shall make copies of the public offering
statement freely available to prospective purchasers prior to the
contract date of disposition.

e. The developer shall make copies of any written report or
document prepared pursuant to sections 3, 4, or 10 of P.L. , c.
(C ., C ., or C .) (pending before the Legislature as this
bill) available to prospective purchasers prior to the contract date of
disposition.

(cf: P.L.1977, c.419, s.6)

7. (New section) a. Any association created pursuant to
P.L.1977, c.419 (C.45:22A-21 et seq.) shall undertake and fund a
capital reserve study which shall determine or assess the adequacy
of the association’s capital reserve funds to meet the anticipated
costs of replacement or repair of the capital assets of a common
interest community that the association is obligated to maintain.

All capital reserve studies shall be prepared in conformity with the
latest edition of the National Reserve Study Standards of the Community Associations Institute or similar standards by another recognized national organization. A capital reserve study conducted pursuant to this section shall be performed or overseen by a reserve specialist who is credentialed through the Association of Professional Reserve Analysts or an engineer or architect who is licensed by the State and shall include, but be not limited to, the following:

1. the association’s capital reserve fund balances;
2. the association’s anticipated income and expenses;
3. an analysis of the physical status and of the common area components of the buildings and other common areas that the association is obligated to maintain;
4. the anticipated costs associated with the building maintenance, as well as the anticipated costs of repair or replacement of common area building components, which are necessary to maintain the structural integrity of the buildings and other common area components that the association is obligated to maintain;
5. a reasonable estimate of the cost of future reserve studies or updates;
6. a reasonable estimate of the costs associated with implementing any corrective maintenance deemed necessary pursuant to section 4 of P.L. , c. (pending before the Legislature as this bill);
7. a proposed 30-year funding plan, as described in section 8 of P.L. , c. (pending before the Legislature as this bill) that establishes the adequate proposed capital reserve funding over a 30-year time period; and
8. any other information necessary to perform an analysis of the adequacy of the association’s capital reserve funds relative to maintaining the structural integrity of buildings and common areas which the association is obligated to maintain.

b. Associations which have not undertaken a reserve study within five years of the effective date of P.L. , c. (pending before the Legislature as this bill) shall undertake a reserve study within one year of the effective date of P.L. , c. (pending before the Legislature as this bill). Associations formed after the effective date of P.L. , c. (pending before the Legislature as this bill) shall undertake a reserve study as soon as practicable after the election of a majority of an executive board pursuant to section 5 of P.L.1983, c.30 (C.45:22A-47), but in no event shall such study be undertaken more than two years following the election of a majority of the executive board under section 5 of P.L.1983, c.30 (C.45:22A-47).

c. A covered building owner shall ensure that a capital reserve study conducted pursuant to this section shall be reviewed by a licensed architect, engineer, or credentialed reserve specialist, and
that a capital reserve study be conducted and reviewed at least once every five years.

d. This section shall not apply to an association created pursuant to P.L. 1977, c.419 (C.45:22A-21 et seq.) with less than $25,000 in total common area capital assets.

8. (New section) a. An association created pursuant to P.L. 1977, c.419 (C.45:22A-21 et seq.) shall obtain a reserve study including a 30-year funding plan in order to ensure that the association has adequate reserve funds available to repair or replace the capital assets located on the common elements and facilities that the association is obligated to maintain without need to create a special assessment or loan obligation, except that in those cases in which a capital asset reaches the end of its established useful life earlier than predicted by the reserve study, nothing herein is intended to prevent the imposition of a special assessment or obtaining a loan. These reserve funds shall be used for the repair or replacement of components that have reached the end of their established useful life as set forth in the most recent reserve study undertaken pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. When an expenditure of the reserve funds is required to repair or replace a component pursuant to subsection a. of this section, the association shall use only the amount of reserve funds allocated by the reserve study to make such repair or replacement, unless:

   (1) the use of such additional funds from the reserve fund is not reasonably anticipated to prevent or interfere with the ability of the association to undertake additional repairs or replacements in the five years subsequent to the additional expenditure; and

   (2) the association’s executive board adopts a written resolution requiring that the expenditure of these additional funds shall be recovered within the following three fiscal years.

c. If an association existing as of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) does not have an adequate reserve fund as described in subsection a. of this section, and the increase in the association’s budget line item for reserve funding to render it adequate as set forth in the reserve study would, without reference to any other budget line item adjustments, require an increase of more than 10 percent of the previous year’s common expense assessment, the deficiency shall be made adequate within the following five fiscal years, provided that each annual increase in reserve funding during the following five fiscal years shall be an equal annual line item increase in the reserve fund until the reserve fund is made adequate, notwithstanding causing an increase of more than 10 percent in the annual common expense assessment.

d. If an association existing as of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) does not have
an adequate reserve fund as described in subsection a. of this section, and the increase in the association’s budget line item for reserve funding to render it in conformity with the reserve study would, without reference to any other item adjustments, require an increase of less than 10 percent of the previous year’s common expense assessment, the deficiency shall be made adequate within the following two fiscal years.

9. (New section) a. Notwithstanding the terms of a declaration, master deed, bylaws, or other governing document of an association, the executive board may, without the consent of the owners or approval of a developer selling units in the planned real estate development, adopt an assessment payable by the owners over one or more fiscal years or obtain a loan on such terms as the board determines are reasonable, whenever necessary to fund the cost of corrective maintenance of the primary load bearing system of the planned real estate development pursuant to section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill). Prior to adopting an assessment or obtaining a loan under this section, the executive board shall make a determination that the assessment or loan are necessary to maintain structural integrity of a building and shall obtain a written report from an engineer or architect licensed by the State that states that the failure to undertake corrective maintenance of the primary load bearing system will:

(1) constitute an imminent or reasonably foreseeable hazard to health or safety;
(2) constitute a violation of sections 3 and 4 of P.L. c. (C. and C. ) (pending before the Legislature as this bill), or
(3) will result in a material increase in the cost of such corrective maintenance if delayed.

b. Nothing in this section shall prevent or interfere with the right of an association to pursue a lawsuit concerning claims for construction defects related to any common element of the planned real estate development.

10. (New section) The developer shall prepare a document which sets forth the preventative maintenance tasks to be undertaken by the association over the life of the common area components. This preventative maintenance document shall provide the maintenance schedule and timing for preventive maintenance, including, but not limited to, periodic inspections of the structural components of the buildings or common areas which the association is obligated to maintain. The developer shall include within the budget prepared in accordance with the rules and regulations adopted pursuant to section 15 of P.L.1977, c.419 (C.45:22A-35) all operating expenses associated with the preventative maintenance set
forth in the preventative maintenance document prepared pursuant
to this section. The preventative maintenance document shall be
updated at the completion of any structural inspections performed
pursuant to section 3 of P.L. , c. (C. ) (pending before the
Legislature as this bill) in order to reflect and address any required
corrective maintenance.

11. (New section) Within 60 days after the conveyance of 75
percent of the lots, parcels, units or interests, the developer shall
relinquish control of the association, and the unit owners shall
accept control, as required by section 5 of P.L.1993, c.30
(C.45:22A-47). At that time, the developer shall also deliver to the
association all property of the unit owners and of the association
held or controlled by the developer, including, but not limited to,
the following items, if applicable, as to each lot, parcel, unit or
interest operated by the association:

a. A photocopy of the recorded master deed or declaration and
all amendments thereto, certified by affidavit of the developer, or an
officer or agent of the developer, as being a complete copy of the
actual master deed.

b. A certified copy of the association's articles of incorporation,
or if not incorporated, then copies of the documents creating the
association.

c. A copy of the bylaws and all amendments thereto, certified by
affidavit of the developer, or an officer or agent of the developer, as
being a complete copy of the bylaws.

d. A preventative maintenance document or manual created by
the developer pursuant to section 10 of P.L. , c. (C. )
(pending before the Legislature as this bill) which sets forth a
schedule for monitoring on a periodic basis the structural integrity
of the buildings' primary load bearing system.

e. The minute books, including all minutes, and other books and
records of the association, if any.

f. Any house rules and regulations which have been
promulgated.

g. Resignations of officers and members of the governing board
or other form of administration who are required to resign because
the developer is required to relinquish control of the association.

h. An accounting for all association funds, including capital
accounts and contributions as of the date of the election of a
majority of the executive board members.

i. Association funds or control thereof.

j. All tangible personal property that is property of the
association, represented by the developer to be part of the common
elements or ostensibly part of the common elements, and an
inventory of that property.

k. A copy of the plans and specifications utilized in the
construction or remodeling of improvements and the supplying of
equipment to the planned real estate development, including plans setting forth all field changes impacting any component of the primary load bearing system and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, his agent, or an architect or engineer authorized to practice in this State that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements.

1. Insurance policies.

m. Copies of any certificates of occupancy which may have been issued for the planned real estate development property.

n. Any other permits issued by governmental bodies applicable to the planned real estate development property in force or issued within one year prior to the date the unit owners other than the developer take control of the association.

o. All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

p. A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

q. Leases of the common elements and other leases to which the association is a party.

r. Employment contracts, management contracts, maintenance contracts, contracts for the supply of equipment or materials, and service contracts in which the association is one of the contracting parties and maintenance contracts and service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

s. All other contracts to which the association is a party.

12. This act shall take effect immediately.

STATEMENT

On June 24, 2021, Champlain Towers South, a 12-story beachfront condominium building built in 1981 in Surfside, Florida, collapsed, killing at least 98 people. Although the exact cause of the building collapse remains under investigation, many reports have surfaced stating that the building had major structural issues. In addition, some experts argue that the repeal of a 2010 Florida law requiring that condominiums plan for certain repairs, may have contributed to this tragic building collapse.

Many New Jersey communities have similar multifamily housing structures. Although, the Department of Community Affairs (DCA)
conduces certain building inspections on a cyclical basis, under the “Hotel and Multiple Dwelling Law” these inspections currently only address maintenance issues and habitability concerns such as heating, infestation, and lead content. In addition, these cyclical inspections are not required to be conducted by an engineer or other expert. This bill would supplement the “State Uniform Construction Code Act” (UCCA) to require that certain covered buildings and plans be inspected and reviewed by a structural inspector, as defined in the bill, during the building’s pre-construction, construction, and post-construction phases. In addition, this bill would supplement “The Planned Real Estate Development Full Disclosure Act” (PREDFDA) to assure that associations created under PREDFDA maintain adequate reserve funds to make certain required maintenance repairs to building components and common areas.

Specifically, this bill would supplement the UCCA to require that a structural inspector review the construction plans submitted with a construction application, set forth an inspection schedule to confirm that the primary load bearing system conforms to the building plans, and issue a written report which determines whether the primary load bearing system conforms to the building plans. A certificate of occupancy would not be issued under this bill until the structural inspector’s report confirms that the construction of the primary load bearing system of the building is in conformance with the approved construction plans. Similarly, this bill would preclude the issuance of a certificate of occupancy until any necessary repairs, renovations, alterations, or modifications to the structural components of a covered building are made pursuant to the inspector’s report. Any additional cost to the enforcing agency incurred as a result of inspections required under this bill would be recovered through a fee associated with the construction application.

In addition, this bill would require that an association created under PREDFDA undertake a capital reserve study to identify and assess the adequacy of the association’s capital reserve funds to meet the anticipated costs associated with maintaining the structural integrity of the buildings which the association is obligated to maintain. This capital reserve study would be conducted by a credentialed reserve specialist, or licensed engineer or architect, and would include, an analysis of the following:

- the association’s capital reserve fund balances;
- the association’s anticipated income and expenses;
- the physical status and structural integrity of the common area components of the buildings and other common areas that the association is obligated to maintain;
- the anticipated costs associated with the building maintenance, as well as the anticipated costs of repair or
replacement of common area building components, that
the association is obligated to maintain;
• a reasonable estimate of the cost of future reserve studies
or updates;
• a reasonable estimate of the costs associated with
implementing any corrective maintenance and periodic
structural inspections;
• a reasonable estimate of the costs associated with
implementing any corrective maintenance deemed
necessary pursuant to the bill;
• a proposed 30-year funding plan that establishes the
adequate proposed funding over a 30-year time period;
and
• any other information necessary to perform an analysis of
the adequacy of the association’s capital reserve funds
relative to the buildings’ common area components and
other common areas which the association is obligated to
maintain.

In addition, this bill would require that the association create and
fund a plan to ensure that adequate reserve funds are available to
repair or replace one or more components of common elements and
facilities which the association is obligated to maintain without
need to create a special assessment or loan obligation. The bill
would also allow an association’s executive board to adopt an
assessment payable by the owners over one or more fiscal years or
obtain a loan on such terms as the board determines to be
reasonable, when necessary to fund the cost of corrective
maintenance of the primary load bearing system of the planned real
estate development. Prior to adopting such an assessment, the
board would need to obtain a written report from a licensed
ingineer or architect explaining that the failure to undertake
corrective maintenance of the primary load bearing system would:
• constitute an imminent or reasonably foreseeable hazard to
health or safety;
• constitute a violation of the UCCA, or
• result in a material increase in the cost of such corrective
maintenance if delayed.

This bill would also require that the developer of a planned real
estate development prepare a document setting forth a schedule for
the preventative maintenance tasks to be undertaken by the
association over the life of the common area components, including,
but not limited to periodic inspections of the structural components
of the buildings or common areas which the association is obligated
to maintain. This document would also be made available to
prospective purchasers or owners of units, parcels or other interests
of the planned real estate development. This preventative
maintenance document would also be updated pursuant to the specifications of any structural inspections or reports performed under the UCCA.