

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 600

INTRODUCER: Regulated Industries Committee and Senator Ingoglia

SUBJECT: Hurricane Protections for Homeowners' Associations

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 600 requires homeowners' associations, or any architectural, construction improvement, or similar committee (committee) to adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the homeowners' association.

The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by the homeowners' association must comply with the applicable building code. The bill allows the homeowners' association or committee to require parcel owners to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

The bill provides that, regardless of any other provision in association governing documents, the homeowners' associations and committees may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the homeowners' association or committee.

The bill defines the term "hurricane protection" to include, but not be limited to, roof systems recognized by the Florida Building Code that meet ASCE 7-22 standards, permanent fixed storm shutters, roll-down track storm shutters, impact-resistant windows and doors, polycarbonate panels, reinforced garage doors, erosion controls, exterior fixed generators, fuel storage tanks and other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the association.

The bill provides, as a statement of legislative intent, that in order to protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, the bill applies to all homeowners' associations in the state, regardless of when the community was created.

The bill takes effect upon becoming law.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹

A "homeowners' association" is defined as a:²

Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.³

Homeowners' associations are administered by a board of directors that is elected by the members of the association.⁴ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁶

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof

¹ See s. 720.302(1), F.S.

² Section 720.301(9), F.S.

³ Section 720.302(5), F.S.

⁴ See ss. 720.303 and 720.307, F.S.

⁵ See ss. 720.301 and 720.303, F.S.

⁶ Section 720.303(1), F.S.

to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.], the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.⁷

The governing documents of a homeowners' association are:⁸

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and
- The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

Section 720.301(3), F.S., defines a "community" as the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto."

The term "common areas" means all real property within a community which is owned or leased by an association or dedicated for use or maintenance by the association or its members, including, regardless of whether title has been conveyed to the association:⁹

- Real property the use of which is dedicated to the association or its members by a recorded plat; or
- Real property committed by a declaration of covenants to be leased or conveyed to the association.

HOA Architectural and Construction Improvement Covenants and Rules

If the governing documents allow, a homeowners' association or committee may:¹⁰

⁷ Section 720.306(9)(c), F.S.

⁸ Section 720.301(8), F.S.

⁹ Section 720.307(2), F.S.

¹⁰ Section 720.3035(1), F.S.

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

A homeowners' association or committee may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.¹¹

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the homeowners' association or committee. If the homeowners' association or committee unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.¹²

A homeowners' association or committee may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.¹³

Levying Fines

Parcel owners, tenants, and guests must comply with a homeowners' association's governing documents, including those related to architectural or construction improvements. Homeowners' associations may levy fines against or suspend the right of a parcel owner, tenant, or a guest of an owner or occupant, to use the common areas,¹⁴ or any other association property, for failing to comply with any provision in the HOA's governing documents.¹⁵

No fine may exceed \$100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed \$1,000 in the aggregate. However, a fine may exceed \$1,000 if the homeowners' association's governing documents authorize such a higher fine. A fine of more than \$1,000 may not become a lien on the property.¹⁶

¹¹ Section 720.3035(2), F.S.

¹² Section 720.3035(4), F.S.

¹³ Section 720.3035(5), F.S.

¹⁴ However, s. 720.305(2)(a), F.S., provides that the right to use common areas does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

¹⁵ Section 720.305, F.S.

¹⁶ Section 720.305(2), F.S.

Hurricane Hardening

Generally, hurricane hardening involves improvements to a building structure and its openings to make it less susceptible to damage from extreme wind, flooding, or flying debris. Hardening improves the durability and stability of a structure, making it better able to withstand the impacts of hurricanes and weather events without sustaining major damage.¹⁷

Hurricane hardening includes installing hurricane impact-rated doors, windows with impact-resistant glass, reinforced roof and wall structures that meet or exceed high-velocity impact codes, independent emergency power systems, potable water storage, fuel stores, and other supplies and systems that will sustain those within the building for a certain time period after a storm.¹⁸

Most hurricane hardening must be installed in compliance with applicable codes, including the Florida Building Code, and by a licensed construction contractor.¹⁹

Condominium Hurricane Protection Specifications

Homeowners' associations under ch. 720, F.S., are not required to adopt hurricane shutter standards or any other type of hurricane protection standards. However, each residential condominium must adopt hurricane shutter specifications for each building of the condominium, which must include color, style, and other factors deemed relevant by the condominium. All such specifications must comply with the applicable building code.²⁰ A condominium is not required to adopt other hurricane protection specifications.

A condominium may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a condominium unit owner conforming to the condominium's adopted specifications.²¹

III. Effect of Proposed Changes:

The bill amends s. 720.3035, F.S., to require homeowners' associations, or any architectural, construction improvement, or similar committee (committee) to adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the homeowners' association.

¹⁷ WGI, *Hurricane Hardening*, June 14, 2018, available at: <https://wginc.com/hurricane-hardening/> (last visited Jan. 21, 2024); U.S. Department of Energy, *Hardening and Resiliency U.S. Energy Industry Response to Recent Hurricane Seasons*, Aug. 2010, p.8, <https://www.oe.netl.doe.gov/docs/HR-Report-final-081710.pdf> (last visited Jan. 21, 2024).

¹⁸ U.S. Department of Energy, *Hardening and Resiliency U.S. Energy Industry Response to Recent Hurricane Seasons*, Aug. 2010, p.8, <https://www.oe.netl.doe.gov/docs/HR-Report-final-081710.pdf> (last visited Jan. 21, 2024).

¹⁹ See s. 553.72(1), F.S., relating to purpose and intent of the Florida Building Code, and s. 489.105, F.S., defining the term "contractor" for the purpose of the licensing and the regulation of construction contracting.

²⁰ Section 718.113(5), F.S.

²¹ Section 718.113(5)(d), F.S.

The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by a homeowners' association must comply with the applicable building code.

The bill allows the homeowners' association or committee to require parcel owners to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

The bill provides that, regardless of any other provision in association governing documents, a homeowners' association and committee may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the homeowners' association or committee.

The bill provides that the term "hurricane protection" includes, but is not limited to:

- Roof systems recognized by the Florida Building Code that meet ASCE 7-22 standards;²²
- Permanent fixed storm shutters;
- Roll-down track storm shutters;
- Impact-resistant windows and doors;
- Polycarbonate panels;
- Reinforced garage doors;
- Erosion controls;
- Exterior fixed generators;
- Fuel storage tanks; and
- Other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the homeowners' association.

The bill provides, as a statement of legislative intent, that in order to protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, the bill applies to all homeowners' associations in the state, regardless of when the community was created.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²² Released every six years, the American Society of Civil Engineers (ASCE) develops professional standards for structural engineering. The current, 2022 edition of the standard is ASCE 7-22, which provides minim design loads and associated criteria for buildings and other structures,. See Federal Emergency Management Administration, *FEMA Fact Sheet, Highlights of Significant Changes to the Wind Load Provisions of ASCE 7-22*, available at: https://www.fema.gov/sites/default/files/documents/fema_asce-7-22-wind-highlights_fact-sheet_2022.pdf (last visited Jan. 27, 2024).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Homeowners' associations may incur increased expenses related to the requirement in the bill for the association to adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the homeowners' association. Homeowners' associations may need to retain the services of qualified professionals, such as architects or engineers, to advise the board of the association on the appropriate hurricane protection standards for the communities.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 720.3035 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on January 29, 2024:

The committee substitute revises the meaning of the term “hurricane protection” to replace the “metal roofs” with “roof systems recognized by the Florida Building Code that meet ASCE 7-22 standards.” It also adds exterior fixed generators and fuel storage tanks to the meaning of the term “hurricane protection.”

- B. **Amendments:**

None.