

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 293 Hurricane Protections for Homeowners' Associations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Sirois and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 600

FINAL HOUSE FLOOR ACTION: 108 Y's 0 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/HB 293 passed the House on February 28, 2024. The bill was amended in the Senate on March 3, 2024, and was returned to the House. The House concurred in the Senate amendment and passed the bill as amended on March 5, 2024.

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs may impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents.

If the HOA's governing documents allow, an HOA or its architectural, construction improvement, or other similar committee (ARC) may:

- 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.

Hurricane hardening involves improvements to a home or other structure 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 without sustaining major damage.

The bill:

- Requires an HOA or ARC to adopt **hurricane protection** specifications for each structure or other improvement on a parcel governed by the HOA. The specifications may include the color and style of hurricane protection products and must comply with the applicable building code.
- Prohibits an HOA or ARC from denying an application for installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to specifications adopted by the HOA or ARC.
- Allows the HOA or ARC to require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.
- Provides that "hurricane protection" includes, but is not limited to:
 - Roof systems recognized by the Florida Building Code which meet ASCE 7-22 standards,
 - Permanent fixed or roll-down track storm shutters,
 - Impact-resistant windows and doors,
 - Polycarbonate panels,
 - Reinforced garage doors,
 - Erosion controls,
 - Exterior fixed generators, and
 - Fuel storage tanks.

The bill provides 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 HOAs in the state, regardless of when the community was created.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors (board). The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.²

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.³

HOA Architectural and Construction Improvement Covenants and Rules

If the governing documents allow, an HOA or its architectural, construction improvement, or other similar committee (ARC) may:⁴

- 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.

The HOA or ARC 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.⁵

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 HOA or ARC. If the an HOA or ARC unreasonably, knowingly, and willfully infringes

¹ S. 720.301(9), F.S.

² See generally ch. 720, F.S.

³ S. 720.311, F.S.

⁴ S. 720.3035(1), F.S.

⁵ S. 720.3035(2), F.S.

upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney fees.⁶

An HOA or ARC 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.⁷

Levying Fines

Owners, tenants, and guests must comply with an HOA's governing documents, including those related to architectural or construction improvements. HOAs may levy fines against or suspend the right of a parcel owner, tenant, or guest of an owner or occupant, to use the common areas⁸ or any other association property for failing to comply with any provision in the HOA's governing documents.⁹

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 HOA's governing documents authorize it. A fine may not become a lien on the property unless it exceeds \$1,000.¹⁰

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.¹¹

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.¹²

Most hurricane hardening must be installed in compliance with applicable codes, including the Florida Building Code, and by a licensed construction contractor.¹³

Condominium Hurricane Protection Specifications

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.¹⁴ A condominium is not required to adopt other hurricane protection specifications.

⁶ S. 720.3035(4), F.S.

⁷ S. 720.3035(5), F.S.

⁸ This 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. S. 720.305(2)(a), F.S.

⁹ S. 720.305, F.S.

¹⁰ S. 720.305(2), F.S.

¹¹ *Hurricane Hardening*, WGI, (June 14, 2018), <https://wginc.com/hurricane-hardening/> (last visited Dec. 8, 2023); *Hardening and Resiliency U.S. Energy Industry Response to Recent Hurricane Seasons*, U.S. Department of Energy, Aug. 2010, p.8, <https://www.oe.netl.doe.gov/docs/HR-Report-final-081710.pdf> (last visited Dec. 8, 2023).

¹² *Id.*

¹³ See s. 553.72(1), F.S.; s. 489.105, F.S.

¹⁴ S. 718.113(5), F.S.

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 specifications.¹⁵

Effect of the Bill

The bill requires an HOA or any ARC to adopt **hurricane protection** specifications for each structure or other improvement on a parcel governed by the HOA. 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 HOA must comply with the applicable building code.

The bill allows the HOA or ARC to require a parcel owner 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 the HOA's governing documents, the HOA or ARC 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 HOA or ARC.

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

- Roof systems recognized by the Florida Building Code which 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 HOA.

The bill provides 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 HOAs in the state, regardless of when the community was created.

The bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

¹⁵ S. 718.113(5)(d), F.S.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more HOA parcel owners to harden their homes to withstand a storm, which could increase construction in the state and reduce effects of a storm on residences.

D. FISCAL COMMENTS:

None.