

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1593 Community Associations

SPONSOR(S): Farkas and others

TIED BILLS: IDEN./SIM. BILLS: SB 2062

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Civil Justice Committee, Kruse, Billmeier.

SUMMARY ANALYSIS

HB 1593 creates section 718.1265, F.S., to authorize condominium associations to exercise emergency powers during a catastrophic event. Those powers include the ability to:

- Declare any portion of the condominium property unavailable for entry in order to protect the health, safety, or welfare of such persons;
• Mitigate further damage by removing wet drywall, insulation, carpet, cabinetry, or other fixtures, even if the unit owner is obligated by the declaration or law to insure or replace such items, and removing personal property from a unit and storing it on or off-site or disposing of it. Unit owners are responsible for reimbursing the association for such costs;
• Contract for services which are necessary to prevent further damage;
• Implement a disaster plan prior to, during or after a catastrophic event;
• Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability. Such persons have the same authority to act as the person to whom they are appointed to act for or assist;
• Conduct board meetings with notice given only to directors with whom it is practicable to communicate. The directors attending such meetings constitute a quorum, regardless of any quorum requirements; and
• Levy special assessments.

A catastrophic emergency includes:

- a state of emergency declared by civil or law enforcement authorities is in effect for the areas where the condominium is located;
• a hurricane watch or warning is in effect for the area where the condominium is located;
• a partial or complete evacuation order from civil or law enforcement authorities is in effect for the area where the condominium is located; or
• a disaster or other event, whether natural or manmade, such as an earthquake, flood, tidal wave or surge, hurricane, tornado, environmental contamination, fire, explosion, war, civil unrest, or act of terrorism seriously damages, or threatens to seriously damage, the condominium property.

The bill also extends the deadline for retrofitting common areas in condominiums with fire sprinklers, and creates section 712.11, F.S., to permit certain homeowners' associations to revive extinguished declarations.

This bill will not have a fiscal impact on state or local governments.

This bill will take effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1593.CJ.doc

DATE: 3/25/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security – This bill provides condominium associations with emergency powers during specified catastrophic events.

B. EFFECT OF PROPOSED CHANGES:

Emergency Powers

The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation oversees compliance by condominium associations with ch. 718, F.S., which governs condominium associations. According to the Department, many condominium associations have had to address emergency operations issues this past year due to the high number of storms that have impacted the state. In general, the law does not set forth condominium association emergency powers in a catastrophic event.

Association Powers and Operation

The powers of an association include the power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities. The association has this power “whether or not the lands or facilities are contiguous to the lands of the condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.”¹ Generally, the operation of an association is governed by the articles of incorporation and the bylaws of the association.²

Contracts for Products and Services

Section 718.3026, F.S., provides that most contracts entered into by an association, particularly any contracts for the provisions of services, must be in writing. This section also requires an association to obtain a competitive bid if a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment in the aggregate that exceeds 5 percent of the total annual budget of the association, including reserves. This section also provides that the association is not required to accept the lowest bid. However, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are exempt from the bidding requirement. This section also states that “[n]othing contained herein is intended to limit the ability of an association to obtain needed products and services in an emergency.”³

Assessments

If an association imposes a special assessment, the specific purpose must be put in writing and be delivered to each unit owner. Any funds collected from special assessments may only be used for the specific purpose set out in the notice. Any excess funds remaining are considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.⁴

¹ Section 718.114, F.S.

² Section 718.112(1)(a), F.S.

³ Section 718.3026(2)(b), F.S.

⁴ Section 718.116, F.S.

Association Bylaws

A condominium association's bylaws usually spell out the specific responsibilities of an association. Section 718.112(2), F.S., provides items that must be included in an association's bylaws, and provides that if the items are not included, the bylaws are deemed to include those items. Among some of those items are the following:

Appointment – This section provides that the powers, duties and the appointment of a condominium board must be provided for in the bylaws. This section also states that “[u]nless prohibited in the bylaws, the board...may appoint other officers and grant them the duties it deems appropriate.”⁵

Board Meeting – A board meeting notice must include an agenda and must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. The statute provides that: Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting...If there is no condominium property or association property upon which notices can be posted, notices of board meetings shall be mailed, delivered, or electronically transmitted at least 14 days before the meeting to the owner of each unit.⁶

Unit Owners Meetings – A written notice for a unit owners meeting, including an annual meeting, must include an agenda, and must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days prior to the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting.⁷

Assessments – The bylaws must also provide for the manner of collecting assessments from the unit owners, and such assessments must be made not less frequently than quarterly.⁸

Optional Provisions – Under the statute, the bylaws may also include:

- (a) A method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements.
- (b) Restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements.
- (c) Provisions for giving notice by electronic transmission in a manner authorized by law of meetings of the board of directors and committees and of annual and special meetings of the members.
- (d) Other provisions which are not inconsistent with this chapter or with the declaration, as may be desired.⁹

Retrofitting Sprinkler Systems

The law currently provides that those associations required to retrofit the fire sprinkler systems must do so by the end of the year 2014, or vote to forego retrofitting by a 2/3 vote of all voting interests in the condominium.¹⁰

⁵ Section 718.112(2)(a)1., F.S.

⁶ Section 718.112(c), F.S.

⁷ Section 718.112(2)(d)2., F.S.

⁸ Section 718.112(2)(g), F.S.

⁹ Section 718.112(3), F.S.

¹⁰ Section 718.112(2)(l), F.S.

Reviving Covenants and Restrictions

Section 712.02, F.S., provides that:

Any person having the legal capacity to own land in this state, who, alone or together with her or his predecessors in title, has been vested with any estate in land of record for 30 years or more, shall have a marketable record title to such estate in said land, which shall be free and clear of all claims except the matters set forth as exceptions to marketability in s. 712.03.

This law had the effect of extinguishing covenants and restrictions of some condominium associations who had filed covenants and restrictions over 30 years ago. According to proponents of the bill, once this problem was exposed, steps were taken through legislative initiatives in 2002 and 2003 to provide mechanisms to allow planned communities whose covenants were nearing extinguishment age, but not yet extinguished, to extend the term of those covenants and restrictions.¹¹ Additional legislative fixes included mandatory homeowners' associations whose covenants and restrictions had been extinguished, but apparently did not include voluntary homeowners' associations whose covenants and restrictions were extinguished by ch. 712, F.S.

To revive a declaration of covenants, parcel owners in a community may seek approval from the Department of Community Affairs once all of the following requirements are met:

- (1) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;
- (2) The revived declaration must be approved in the manner provided in s. 720.405(6); and
- (3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:
 - (a) Have an effective term of longer duration than the term of the previous declaration;
 - (b) Omit restrictions contained in the previous declaration;
 - (c) Govern fewer than all of the parcels governed by the previous declaration;
 - (d) Provide for amendments to the declaration and other governing documents; and
 - (e) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.¹²

After a community has formed an organizing committee to draft or obtain the correct documents to revive extinguished covenants, "a majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the homeowners' association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306."¹³

Within 60 days of the parcel owners' approval, the organizing committee must submit the documents to the Department of Community Affairs. The Department must make a determination within 60 days of submittal that either the documents comply or do not comply with the requirements of the statute, and then so inform the community.¹⁴

No later than 30 days after receiving approval from the department, the organizing committee must file the articles of incorporation of the association with the Division of Corporations of the Department of State if the articles have not been previously filed with the division. No later than 30 days after receiving approval from the division, the president and secretary of the association must execute the revived declaration and other governing documents approved by the department in the name of the association

¹¹ Explanation paper for HB 1593 (on file with the Civil Justice Committee).

¹² Section 720.404, F.S.

¹³ Section 720.405(6), F.S.

¹⁴ Section 720.406(1) and (2), F.S.

and have the documents recorded with the clerk of the circuit court in the county where the affected parcels are located.¹⁵

HB 1593

The bill creates section 718.1265, F.S., which provides emergency powers for condominium associations in catastrophic events as follows:

In addition to the emergency powers granted to the board by the condominium documents, the bill provides the following powers. The board may:

- Declare any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees in order to protect the health, safety, or welfare of such persons;
- Determine whether the condominium property can be safely inhabited or occupied;
- Mitigate further damage, including preventing or eradicating fungus, mold, or mildew by removing wet drywall, insulation, carpet, cabinetry, or other fixtures, even if the unit owner is obligated by the declaration or law to insure or replace such items, and removing personal property from a unit and storing it on or off-site or disposing of it. Unit owners are responsible for reimbursing the association for such costs;
- Contract for services which are necessary to prevent further damage. Such services include drying of units, boarding of broken windows or doors, and replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property;
- Implement a disaster plan prior to, during or after a catastrophic event, including shutting down elevators, electricity, water, sewer, security systems or air conditioners;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability. Such persons have the same authority to act as the person to whom they are appointed to act for or assist;
- Relocate the principal office or designate alternative principal offices;
- Conduct board meetings with notice given only to directors with whom it is practicable to communicate. Such notice may be given in any practicable manner, including publication or radio. The directors attending such meetings constitute a quorum, regardless of any quorum requirements. Notice of board decisions may be communicated by posted signs, mailed notice to members, internet postings, public service announcements, or any other means of communication which the board deems reasonable under the circumstances;
- Cancel and reschedule any association meeting;
- Suspend or modify notice requirements for board or unit owner meetings;
- Use reserve funds for nonscheduled purposes, including pledging reserve funds as collateral for loans to meet association needs;
- Levy special assessments; or,
- Borrow money and pledge association assets as collateral without unit owner approval. This subsection indicates that the paragraph does not limit the general authority of the association to borrow money.

The bill defines “catastrophic emergency” as:

- a state of emergency declared by civil or law enforcement authorities is in effect for the areas where the condominium is located;
- a hurricane watch or warning is in effect for the area where the condominium is located;
- a partial or complete evacuation order from civil or law enforcement authorities is in effect for the area where the condominium is located;
- the area where the condominium is located is declared a state or federal disaster area or is eligible for state or federal economic relief because of a disaster; or

¹⁵ Section 720.407(1) and (2), F.S.

- a disaster or other event, whether natural or manmade, such as an earthquake, flood, tidal wave or surge, hurricane, tornado, environmental contamination, fire, explosion, war, civil unrest, or act of terrorism seriously damages, or threatens to seriously damage, the condominium property.

The bill also provides that acts by the board taken in good faith during a catastrophic emergency bind the association and create a rebuttable presumption of being reasonable and necessary. Except in the case of willful misconduct, board members, officers, agents, or employees of the association are immune from civil liability if acting on reasonable belief that their actions comply with this section.

This bill amends section 718.112(2)(l), F.S., by providing that local authorities having jurisdiction over fire sprinkler system retrofitting cannot require completion of retrofitting common areas before the end of the year 2020.

This bill also creates section 712.11, F.S., to provide that homeowners' associations that are not otherwise subject to ch. 720, F.S., may use the procedures provided in sections 720.401 through 720.407, F.S., to revive a declaration of covenants and restrictions which were extinguished pursuant to ch. 712, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 718.1265, F.S., to provide emergency powers to a condominium association. During an emergency in connection with a catastrophic event, a board may:

- Declare any portion of the condominium property unavailable for entry in order to protect the health, safety, or welfare of such persons;
- Determine whether the condominium property can be safely inhabited or occupied;
- Mitigate further damage by removing wet drywall, insulation, carpet, cabinetry, or other fixtures, even if the unit owner is obligated by the declaration or law to insure or replace such items, and removing personal property from a unit and storing it on or off-site or disposing of it. Unit owners are responsible for reimbursing the association for such costs;
- Contract for services which are necessary to prevent further damage;
- Implement a disaster plan prior to, during or after a catastrophic event;
- Appoint persons to act as agents for or assist any director or officer due to incapacity or unavailability. Such persons have the same authority to act as the person to whom they are appointed to act for or assist;
- Relocate the principal office or designate alternative principal offices;
- Conduct board meetings with notice given only to directors with whom it is practicable to communicate. The directors attending such meetings constitute a quorum, regardless of any quorum requirements;
- Cancel and reschedule any association meeting;
- Suspend or modify notice requirements for board or unit owner meetings;
- Use reserve funds for nonscheduled purposes, including pledging reserve funds as collateral for loans to meet association needs;
- Levy special assessments; or,
- Borrow money and pledge association assets as collateral without unit owner approval.

This section also defines the term "catastrophic emergency" to include:

- a state of emergency declared by civil or law enforcement authorities is in effect for the areas where the condominium is located;
- a hurricane watch or warning is in effect for the area where the condominium is located;
- a partial or complete evacuation order from civil or law enforcement authorities is in effect for the area where the condominium is located;
- the area where the condominium is located is declared a state or federal disaster area or is eligible for state or federal economic relief because of a disaster; or

- a disaster or other event, whether natural or manmade, such as an earthquake, flood, tidal wave or surge, hurricane, tornado, environmental contamination, fire, explosion, war, civil unrest, or act of terrorism seriously damages, or threatens to seriously damage, the condominium property.

Additionally, this section provides that actions by the board taken in good faith during a catastrophic emergency bind the association and create a rebuttable presumption of being reasonable and necessary. Except in the case of willful misconduct, board members, officers, agents, or employees of the association are immune from civil liability if acting on reasonable belief that their actions comply with this section.

Section 2. Amends s. 718.112, F.S., regarding bylaws of an association, to provide that local authorities having jurisdiction over fire sprinkler system retrofitting cannot require completion of retrofitting common areas before the end of the year 2020.

Section 3. Creates s. 712.11, F.S., to provide that homeowners' associations that are not otherwise subject to ch. 720, F.S., may use the procedures provided in sections 720.401 through 720.407, F.S., to revive a declaration of covenants and restrictions which were extinguished pursuant to ch. 712, F.S.

Section 4. Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Business and Professional Regulation reports that the bill will have no revenue impact on state government.

2. Expenditures:

The Department reports that the bill will not require any expenditure by state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Department reports that the bill will have no revenue impact on local governments.

2. Expenditures:

The Department reports that the bill will not require any expenditure by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The extension of the date to 2020 to retrofit condominiums with fire sprinklers will likely mean that condominium associations will not have to expend the funds necessary to undertake a retrofit as soon as they would have under current law.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department reports that this bill will not require the promulgation of new rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the phrase "catastrophic event" and "catastrophic emergency" interchangeably, but defines the phrase "catastrophic emergency" to mean the onset of certain events. The use of both phrases may cause some confusion. Since the bill defines "catastrophic emergency," the Legislature may wish to consider amending the bill to use that phrase throughout the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.