

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 148

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Geller

SUBJECT: Homeowners' Associations/U.S. Flag

DATE: December 5, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides that any homeowner may display a portable, removable US flag in a respectful way, regardless of any homeowner association restrictions.

This bill substantially amends sections 720.304 and 720.3075, Florida Statutes.

II. Present Situation:

In 1989, the Legislature created s. 718.113 (4), F.S., to provide that condominium unit owners “may display one portable, removable United States flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations.”

In 1989, the Federal District Court in Tampa held that the state statute permitting condominium unit owners to display the American Flag (s. 718.113(4), F.S.) did not impair existing contract rights of the condominium association to restrict such display. The court suggested in dicta that personal display of the flag is constitutionally protected speech, and because “the statute did not create rights, but merely recognized them, it does not impair existing contract rights.” *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.FL., 1989).

In 2001, the Legislature created s.720.3075 (3), F.S., to address the display of flags by homeowners in subdivisions. This provision states the following:

Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the display of one United States flag by property owners. However, the flag must be displayed in a respectful way and may be subject to reasonable standards for size, placement, and safety, as adopted by the

homeowners' association, consistent with Title 36 U.S.C. chapter 10 and any local ordinances.

In October 2000 a Palm Beach Circuit Court ruled that a resident violated rules established by the subdivision's homeowners' association when he installed a flagpole on his property. The 4th District Court of Appeals affirmed the decision. *Andres v. Indian Creek Phase III-B Homeowners Association, Inc.* 788 So.2d 983 (Fla. 4th DCA 2001).

The law requires homeowners to display the U.S. flag "in a respectful way." However, "respectful way" is undefined, and the law does not specify who determines whether the flag display meets this condition.

III. Effect of Proposed Changes:

Section 1 creates s. 720.304(2), F.S., to allow homeowners to "display one portable, removable U.S. flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations." This language is functionally identical to the provision addressing the display of flags by condominium unit owners.

Section 2 amends s. 720.3075(3), F.S., to delete the authority of homeowners' associations to set "reasonable standards" for flag size, placement, and safety. This provision is clarified to state that homeowners' association documents may not preclude the display of one "portable, removable" U.S. flag by property owners.

Section 3 states that the act applies retroactively.

Section 4 provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill excuses homeowners from standards of flag display, as adopted by the respective homeowner's association or as specified in declarations of covenants or articles of incorporation. Because it applies retroactively, it may be challenged as an unconstitutional impairment of contract.

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community. *Stone v. Mississippi*, 101 U.S. 814 (1880). The severity of the impairment is a key issue when evaluating whether a state law impairs a contract. *General Motors Corp. v. Romein*, 503 U.S. 181 (1992). In *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

In 1989, the Federal District Court in Tampa held that the state statute permitting condominium unit owners to display the American Flag [s. 718.113(4), F.S.] did not impair existing contract rights of the condominium association to restrict such display. The court suggested in dicta that personal display of the flag is constitutionally protected speech, and because “the statute did not create rights, but merely recognized them, it does not impair existing contract rights.” *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.FL., 1989).

Article I, Section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers. *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980). This exception extends to laws that are reasonable and necessary to serve an important public purpose *Yellow Cab C. V. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982), to include protecting the public’s health, safety or welfare. [*Khoury v Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla. 1981).

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts. *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So2d 774 (Fla. 1979).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
