

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 39

POW-MIA Flag

**SPONSOR(S):** Boyd

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 274

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Conservation &amp; State Lands</u>	<u>8 Y, 0 N</u>	<u>Palmer</u>	<u>Zeiler</u>
2) <u>Environment &amp; Natural Resources Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Palmer / Perkins</u>	<u>Dixon / Hamby</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The bill requires the Department of Environmental Protection (DEP) to purchase and display the POW-MIA flag year round at each state park where the flag of the United States is displayed.

The bill does not appear to have a significant fiscal impact on state or local governments.

The bill would become effective on July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill requires the Department of Environmental Protection (DEP) to display the POW-MIA flag year round at each state park where the flag of the United States is displayed.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background on POW-MIA Flag<sup>1</sup>

In 1971, Mrs. Michael Hoff, an MIA wife and member of the National League of Families of American Prisoners and Missing in Southeast Asia (League), recognized the need for a symbol of our prisoner of war (POW) and missing in action (MIA) military personnel. Prompted by an article in the Jacksonville, Florida Times-Union, Mrs. Hoff contacted Norman Rivkees, Vice President of Annin & Company which had made a banner for the newest member of the United Nations, the People's Republic of China, as a part of their policy to provide flags to all United Nations member states. Mrs. Hoff found Mr. Rivkees very sympathetic to the POW/MIA issue, and he, along with Annin's advertising agency, designed a flag to represent our missing military personnel. Following League approval, flags were manufactured for distribution.

On March 9, 1989, an official League flag, which flew over the White House on 1988 National POW/MIA Recognition Day, was installed in the U.S. Capitol Rotunda as a result of legislation passed overwhelmingly during the 100th Congress. In a demonstration of bipartisan Congressional support, the leadership of both Houses hosted the installation ceremony.

The League's POW/MIA flag is the only flag ever displayed in the U.S. Capitol Rotunda, where it will stand as a powerful symbol of national commitment to America's POW-MIA's until the fullest possible accounting has been achieved for U.S. personnel still missing and unaccounted for from the Vietnam War.

On August 10, 1990, the 101st Congress passed U.S. Public Law 101-355, which recognized the League's POW/MIA flag and designated it *"as the symbol of our Nation's concern and commitment to resolving as fully as possible the fates of Americans still prisoner, missing and unaccounted for in Southeast Asia, thus ending the uncertainty for their families and the Nation"*.

The importance of the League's POW/MIA flag lies in its continued visibility, a constant reminder of the plight of America's POW/MIAs. Other than the flag of the United States, the League's POW/MIA flag is the only flag ever to fly over the White House, having been displayed in this place of honor on National POW/MIA Recognition Day since 1982. With passage of Section 1082 of the 1998 Defense Authorization Act during the first term of the 105th Congress, the League's POW/MIA flag will fly each year on Armed Forces Day, Memorial Day, Flag Day, Independence Day, National POW-MIA Recognition Day and Veterans Day on the grounds or in the public lobbies of major military installations as designated by the Secretary of the Defense, all Federal national cemeteries, the national Korean War Veterans Memorial, the National Vietnam Veterans Memorial, the White House, the United States Postal Service post offices and at the official offices of the Secretaries of State, Defense and Veteran's Affairs, and Director of the Selective Service System.

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<sup>1</sup> History adapted from <http://www.dtic.mil/dpmo/powday/flaghistory.htm>; © 1998, National League of POW/MIA Families.

## Present Situation

Section 256.12, F.S., requires that on or after September 19, 1990, at each state-owned building at which the flag of the United States is displayed, a POW-MIA flag must also be displayed if the POW-MIA flag is available free of charge to the agency that occupies the building and if such display is in accordance with federal laws and regulations. Federal regulations regarding the display of the POW-MIA flag are found in 4 USC § 7 and 36 USC § 902. At present there is no other requirement that POW-MIA flags be displayed at state parks.

The Division of Recreation and Parks (DRP), DEP has implemented a program to display donated POW-MIA flags at the one-hundred-twenty-two parks at which the DRP's staff daily raise and lower both the US flag and the State of Florida flag. Although Florida has one-hundred-sixty-one state parks, flags are only flown at parks which are staffed and appropriately developed. DRP began raising the POW-MIA flags at state parks on November 10, 2007.<sup>2</sup>

## Effect of Proposed Changes

The bill requires the DEP to purchase and display the POW-MIA flag year round at each state park where the flag of the United States is displayed.

The U.S. Code of Federal Regulations does not address the protocol for display of the POW-MIA flag if a state flag is also displayed. Consequently, the protocol for flying the POW-MIA flag is unclear if a state flag is part of the display. One protocol<sup>3</sup> in use is as follows: On one flagpole, the POW-MIA flag is flown below the flag of the United States and above any state flag. On two flagpoles, the POW/MIA flag is flown on the same pole as the flag of the United States, below the American flag -- this pole should be to the flag's own right of the second pole. Any state flag should fly on the second pole. On three flagpoles, the flag of the United States should be flown on the pole located to the flag's own right, the POW-MIA flag should be flown on the middle pole, and any state flag should be flown on the pole to the flag's own left. A second protocol<sup>4</sup> in use is as follows: the POW-MIA flag may be flown directly under the flag of the United States with the state flag on a separate pole. When flying all three flags on a single pole, the state flag is flown below the flag of the United States and the POW-MIA flag is flown below the state flag.

The Florida Department of Veteran Affairs believes that federal legislation may soon be proposed to establish a single protocol for anyone flying the POW-MIA flag and a state flag in conjunction with the flag of the United States. The State of Florida presently employs protocol number two for the display of the POW-MIA flag above the Capitol.

### C. SECTION DIRECTORY:

Section 1: Creates s. 256.14, F.S., requiring DEP to purchase and then display POW-MIA flags at certain state parks.

Section 2: Provides an effective date.

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<sup>2</sup> Source: Division of Recreation and Parks, Department of Environmental Protection.

<sup>3</sup> *Viet Nam Veterans of America*. <http://www.vva133.com/powmia.htm>.

<sup>4</sup> *State of Washington*. <http://www.dva.wa.gov/POW-MIA%20flag.html>.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

DEP reports that flags have been donated to the DRP and that, beginning November 10, 2007, DRP raised the POW-MIA flags at the state parks where the flag will be displayed. The bill authorizes DEP to purchase POW-MIA flags as necessary.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds, nor does it appear to reduce the authority that cities or counties have to raise revenues in the aggregate, nor does it appear to reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of this bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On March 5, 2008, the Environment & Natural Resources Council passed HB 39 with one traveling amendment by the Committee on Conservation & State Lands. The original bill was amended to require DEP to purchase any necessary POW-MIA flags.