

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 Military Affairs and Domestic Security Committee

BILL: CS/SB 1378

INTRODUCER: Community Affairs Committee and Senator Fasano and others

SUBJECT: Display of Flags/Homeowners' Associations

DATE: March 27, 2008

REVISED: 04/01/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Fav/CS
2.	Pardue	McElroy	MS	Fav/1 amendment
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input checked="" type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) provides that a homeowner may erect a freestanding flagpole that does not exceed 20 feet on any portion of the homeowner's real property notwithstanding any prohibition by the homeowners' association. The homeowner may display, in a respectful manner from that flagpole, one official United States flag and may also display one official flag of the State of Florida, a flag of the U.S. Armed Services, or a POW-MIA flag. Such flag may not be larger than 4 ½ feet by 6 feet. This CS also removes a provision that limits the display of a portable U.S. Armed Services flag to certain holidays. Finally, the CS applies the provisions of s. 720.304, F.S., to nonmandatory homeowners' associations and community development districts.

The traveling amendment includes the POW-MIA flag among the authorized portable, removable flags that may be displayed. The amendment also provides for homeowners' association membership and association board of directors participation for mobile home park residents who reside in concrete block homes occupying park lots under 99-year leases.

The CS with the amendment substantially amends sections 720.304 and 723.075 of the Florida Statutes.

II. Present Situation:

Chapter 720, F.S., governs homeowners' associations and includes provisions relating to operating procedures and protecting the rights of association members without impairing the ability of an association to perform its functions. For purposes of ch. 720, F.S., the term "homeowners' association" is defined as a Florida corporation responsible for the operation of a community in which voting membership is made up of parcel ownership, 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. Under ch. 720, F.S., the term "homeowners' association" does not include a community development district.

In 2000, the Legislature created s. 720.3075 (3), F.S., to prohibit homeowners' association documents, articles of incorporation, or bylaws from precluding the display of one US flag by property owners, subject to some restrictions.¹ 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.²

In 2002, the Legislature amended 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 clarified that homeowners' association documents may not preclude the display of one "portable, removable" U.S. flag by property owners.³ In addition, this law amended 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."⁴ This provision pertaining to homeowners is identical to the provision applying to condominium owners. Later, in 2004, the Legislature expanded those flag display rights in s. 720.304(2), F.S., to include the right to display the official flag of the State of Florida and flags of the U.S. Armed Services.

In addition to providing for the display of flags, s. 720.304, F.S., provides for the right of homeowners to peaceably assemble and prohibits SLAPP (Strategic Lawsuits Against Public Participation) suits. Specifically, the entities responsible for the operation of common areas and recreational facilities in a homeowners' association may not unreasonably restrict a parcel owner's right to peaceably assemble or invite public officers and candidates to speak in those areas or facilities. This section prohibits a governmental entity, business organization, or individual from filing a SLAPP suit against a parcel owner regarding the parcel owner's appearance and representation before a governmental entity on matters related to the homeowners' association. Also, homeowners' associations may not expend association funds on such SLAPP suits against a parcel owner. Under s. 720.304, F.S., a parcel owner may construct an access ramp under certain conditions if the resident or occupant of the parcel has a medical necessity or disability that requires such ramp. Section 720.304, F.S., also allows a parcel owner to display a sign for a security services' contractor if the sign is a reasonable size and located within 10 feet of an entrance to the home. Currently, the provisions of this section apply only to mandatory homeowners' associations.

¹ s. 47, ch. 2000-302, L.O.F.

² *Andres v. Indian Creek Phase III-B Homeowners Association, Inc.* 788 So.2d 983 (Fla. 4th DCA 2001)

³ s. 2, Chapter 2002-50, L.O.F.

⁴ s. 1, Chapter 2002-50, L.O.F.

Section 723.075, F.S., provides for the formation of homeowners' associations by residents of mobile home parks. This section limits participation in such associations to park mobile home owners. Certain parks within the state include permanent residential structures that occupy mobile home park lots under 99-year leases. Owners of these permanent residences may be excluded from homeowners' association membership as well as participation in association leadership under the provisions of s. 723.075, F.S.

III. Effect of Proposed Changes:

The CS amends s. 720.304, F.S., to allow a portable flag of the U.S. Armed Services to be displayed every day, rather than just on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day regardless of any conflict with the governing documents of the homeowners' association.

This CS further allows a homeowner to erect a freestanding flagpole, which does not exceed 20 feet in height, on any portion of the homeowner's real property notwithstanding any covenants, bylaws, rules, or requirements of the homeowners' association. However, the flagpole may not obstruct sight lines at intersections and may not be erected within an easement. The homeowner may display from such flagpole, in a respectful manner, one official United States flag no larger than 4 ½ feet by 6 feet. Additionally, the homeowner may display one official flag of the State of Florida, a flag of the U.S. Armed Services, or a POW-MIA flag that is equal in size or smaller than the United States flag.

The CS adds subsection (7) to s. 720.304, F.S., to apply all of the provisions in that section to nonmandatory homeowners' associations and community development districts. These provisions include: the right of parcel owners to peaceably assemble and invite candidates for public office to speak in common areas; a prohibition on certain SLAPP suits and using homeowners' association funds for those SLAPP suits; allowing construction of an access ramp for a parcel owner with a medical necessity; and allowing the display of signs for security services near a home's entrance.

The bill takes effect July 1, 2008.

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:

Article I, Section 10 of the United States Constitution, and Article I, Section 10 of the Florida Constitution, prohibit 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.⁵ This exception extends to laws that are reasonable and necessary to serve an important public purpose,⁶ to include protecting the public's health, safety or welfare.⁷

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."⁸

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

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 protocol⁹ that is 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

⁵ *Park Benziger & Co. v Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980)

⁶ *Yellow Cab C. V. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982)

⁷ *Khoury v Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla. 1981)

⁸ *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.FL., 1989)

⁹ *Viet Nam Veterans of America*. <http://www.vva133.com/powmia.htm>.

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 protocol¹⁰ that is 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 State of Florida presently employs protocol number two for the display of the POW-MIA flag above the Capitol

VIII. Additional Information:

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

CS by Community Affairs on March 13, 2008:

The CS moves amending language from an unnumbered section of Florida Statute to s. 720.304, F.S., to allow a homeowner to display an official United States flag and an official flag of the State of Florida, a U.S. Armed Services flag, or a POW-MIA flag on a freestanding flagpole that does not exceed 20 feet in certain circumstances. It removes a limitation in existing law on a homeowner displaying a U.S. Armed Forces flag except for certain holidays. (These provisions regarding the display of flags apply regardless of any homeowners' association covenants or restrictions.) The CS applies the provisions of s. 720.304, F.S., to nonmandatory homeowners' associations and community development districts.

- B. **Amendments:**

Barcode 861104 by Military Affairs and Domestic Security on April 1, 2008:

This amendment includes the POW-MIA flag among the other authorized portable, removable flags that may be displayed and adds the phrase "in a respectful manner."

This amendment moves the proposed language that applies the provisions of s. 720.304, F.S., to nonmandatory homeowners' associations and community development districts to a newly created subsection 720.304 (2) (c), F.S., thereby clarifying the applicability of the provisions.

Section 723.075, F.S., is amended to allow mobile home park residents, who reside in concrete block homes occupying lots under 99-year leases within the park, to become members of the homeowners' association and to serve on the board of directors based on the percentage of lots containing concrete block homes to the total number of mobile home lots in the park. (TITLE AMENDMENT)

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ *State of Washington*. <http://www.dva.wa.gov/POW-MIA%20flag.html>.