

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 1682

SPONSOR: Comprehensive Planning Committee and Senator Geller

SUBJECT: Residential Tenancies

DATE: March 23, 2004 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Brown</u> | <u>Lang</u> | <u>JU</u> | <u>Favorable</u> |
| 2. | <u>Herrin</u> | <u>Yeatman</u> | <u>CP</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The committee substitute (CS) precludes landlords from prohibiting tenants from displaying a portable, removable United States flag that does not exceed a certain size, in a respectful manner in or on the dwelling unit, despite any provision in the rental agreement regarding flags and decorations. The tenant must display the flag in accordance with s. 83.52(6), F.S.

The CS provides that a landlord is not liable for damages caused by a United States flag displayed by a tenant. It specifies that a United States flag may not infringe upon the space rented by another tenant. Finally, a landlord who violates the provisions of this CS is subject to certain damages, costs, and fees.

This CS substantially amends s. 83.67 of the 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 2003, the Legislature amended s. 718.113(4), F.S., to allow condominium owners to fly flags representing branches of the U. S. Armed Services on military and patriotic holidays.¹

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.² In October 2000, a Palm Beach Circuit Court

¹ Chapter 2003-28, § 1, Laws of Fla.

² Chapter 2000-302, § 47, Laws of Fla.

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.³

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" United States flag by property owners.⁴ In addition, this law amended s. 720.304(2), F.S., to allow homeowners to "display one portable, removable United States flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations."⁵ This provision pertaining to homeowners is identical to the provision pertaining to condominium owners.

Residential Tenancies

Chapter 83, Florida Statutes, cited as the Florida Residential Landlord and Tenant Act,⁶ governs residential tenancies, and addresses such areas as rental agreements,⁷ payment of rent,⁸ payment of attorney's fees in civil actions,⁹ deposit money,¹⁰ and rights of action for possession.¹¹ Section 83.67, F.S., prohibits certain landlord practices, to include termination or interruption of utility services, blocking of reasonable access to the dwelling unit, discrimination of a military service member, and removal of certain structures. A landlord who violates any of these provisions is liable for actual and consequential damages or three months' rent, whichever is more, and costs to include attorney's fees.

Section 83.52, F.S., provides for the tenant's obligation to maintain a dwelling unit. Specifically, s. 83.52(6), F.S., requires that a tenant "not destroy, deface, damage, impair, or remove any part of the premises or property therein belonging to the landlord nor permit any person to do so."

Flag Restrictions

Two residents at the Aventine apartment complex in Boynton Beach hung a flag in a bedroom window of their unit on September 11, 2001, and were ordered to remove it on January 12, 2004. Alternatively, they were ordered to hide it behind their blinds. The order is based on a standard lease provision that precludes renters from altering their apartments through hanging banners, streamers or even curtains that are visible to the outside. A lawsuit is pending, charging that the property owners are in violation of their lease.¹²

³ *Andres v. Indian Creek Phase III-B Homeowners Ass'n*, 788 So.2d 983 (Fla. 4th DCA 2001).

⁴ Chapter 2002-50, § 2, Laws of Fla.

⁵ Chapter 2002-50, § 1, Laws of Fla.

⁶ Section 83.40, F.S.

⁷ Sections 83.45, 83.47, and 83.56, F.S.

⁸ Section 83.46, F.S.

⁹ Section 83.48, F.S.

¹⁰ Section 83.49, F.S.

¹¹ Section 83.59, F.S.

¹² *Lawmaker Aids Tenants in Fight to Show Flag*, The Palm Beach Post (January 21, 2004)

III. Effect of Proposed Changes:

Section 1 amends s. 83.67, F.S., to preclude landlords from prohibiting tenants from displaying a portable, removable United States flag, in a respectful manner in or on the dwelling unit, despite any provision in the rental agreement addressing flags and decorations. The United States flag displayed by a tenant may not be larger than 4 and one-half feet by 6 feet and shall be displayed in accordance with s. 83.52(6), F.S., requiring that a tenant not damage the premises. A landlord is not liable for damage caused by a United States flag displayed by a tenant. In addition, a landlord who violates the provisions of this CS is subject to certain damages, costs and attorney's fees, and such violation is considered irreparable harm for purposes of injunctive relief. This CS makes editorial changes.

Section 2 provides that the CS 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 CS prohibits a landlord from preventing a tenant from displaying a United States flag in or on the dwelling unit regardless of any provision in the rental agreement. Retroactive application of this CS may raise the issue of impairing obligations of contracts.¹³

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.¹⁴ The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.¹⁵ In *Exxon Corp. v. Eagerton*¹⁶, 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.

¹³ Art. I, § 10, Fla. Const.; Art. I, § 10 U.S. Const.

¹⁴ *Stone v. Mississippi*, 101 U.S. 814 (1880).

¹⁵ *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

¹⁶ 462 U.S. 176 (1983).

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.”¹⁷

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.¹⁸ This exception extends to laws that are reasonable and necessary to serve an important public purpose,¹⁹ to include protecting the public’s health, safety or welfare.²⁰

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.²¹

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.

¹⁷ Gerber v. Longboat Harbour North Condominium, Inc., 724 F.Supp. 884 (M.D.FL., 1989).

¹⁸ Park Benziger & Co. v. Southern Wine & Spirits, Inc., 391 So. 2d 681 (Fla. 1980).

¹⁹ Yellow Cab Co. v. Dade County, 412 So. 2d 395 (Fla. 3rd DCA 1982), *cert. denied*, 424 So. 2d 764 (Fla. 1982).

²⁰ Khoury v. Carvel Homes South, Inc., 403 So. 2d 1043 (Fla. 1st DCA 1981), *cert. denied*, 412 So. 2d 467 (Fla. 1981).

²¹ Pomponio v. Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla. 1979).

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