

**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 Community Affairs Committee

BILL: CS/SB 1378

INTRODUCER: Community Affairs Committee, Senator Fasano and others

SUBJECT: United States Flags/Private Property Rights

DATE: March 14, 2008      REVISED: \_\_\_\_\_

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

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| 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 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.

This CS substantially amends section 720.304 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.<sup>1</sup> 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 4<sup>th</sup> District Court of Appeals affirmed the decision.<sup>2</sup>

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.<sup>3</sup> 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.”<sup>4</sup> 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.

### 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,

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<sup>1</sup> s. 47, ch. 2000-302, L.O.F

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

<sup>3</sup> s. 2, Chapter 2002-50, L.O.F.

<sup>4</sup> s. 1, Chapter 2002-50, L.O.F.

Independence Day, and Veterans Day regardless of any conflict with the governing documents of the homeowners' association. This CS allows a homeowner to erect a freestanding flagpole that does not exceed 20 feet 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. From such flagpole, the homeowner may display, 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.

Subsection (7) is added 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, access ramps for parcel owners with a medical necessity, and the display of signs for security services near a home's entrance.

The CS 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.<sup>5</sup> This exception extends to laws that are reasonable and necessary to serve an important public purpose,<sup>6</sup> to include protecting the public's health, safety or welfare.<sup>7</sup>

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

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

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

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

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.”<sup>8</sup>

**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:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The CS moves the language allowing 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 20 feet in certain circumstances from an unnumbered section of law to s. 720.304, F.S. 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:

None.

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

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