

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 857 Display of Flags

SPONSOR(S): Nehr

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Courts</u>	<u>3 Y, 1 N</u>	<u>Webb</u>	<u>Bond</u>
2) <u>Safety & Security Council</u>	<u></u>	<u>Webb</u>	<u>Havlicak</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, a homeowner may display a portable, removable United States flag and another official, portable, removable flag in a respectful manner notwithstanding any association rule that would prohibit or limit the display of such a flag.

This bill provides that a homeowner may display a United States flag and another official flag on a freestanding flagpole not more than 20 feet high in the front, rear, or side yard of a homeowner's property regardless of any homeowners' association rules or declarations.

This bill does not appear to have a fiscal impact on state or local government revenues or expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill allows homeowners to display a United States flag on a freestanding pole in their yard.

B. EFFECT OF PROPOSED CHANGES:

Background

The term homeowners' association means a Florida corporation responsible for the operation of a subdivision 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.¹ Homeowners' associations are regulated under ch. 720, F.S.

A declaration of covenants is a written instrument that is recorded in the public records of the county in which the homeowners' association is located.² A declaration runs with the land³ and subjects the land comprising the community to the jurisdiction and control of an association or associations.⁴ Homeowners' associations have the authority to enact rules for the benefit of the community.

Flags are generally held to be entitled to First Amendment protection as variants of speech.⁵ In *Gerber v. Longboat Harbor North Condominium, Inc.*, the United States District for the Middle District of Florida found that condominium unit owners have a right to respectfully display the United States flag. While the suit was pending, the Florida Legislature passed a bill to ensure the right to display a United States flag. The court held in *Gerber* that the statute which was passed had merely recognized the plaintiffs' previously existing federal constitutional right to display the flag. The court further held that the statute did not create rights and, therefore, did not impair existing contract rights.⁶

Currently, s. 720.304, F.S., provides that, regardless of any covenants or rules, a homeowner subject to the covenants and restrictions of a mandatory homeowners' association may display one portable, removable United States flag in a respectful manner. The statute also provides that a portable, official flag representing the United States Army, Navy, Air Force, Marine Corps, or Coast Guard may be displayed as well on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day in a respectful manner.

Effect of Bill

This bill provides that, regardless of any declarations or rules of a homeowners' association, a homeowner may display one official United States Flag not larger than 4 feet by 6 feet on a pole not to exceed 20 feet in height in the front, rear or side yard of a homeowner's property as long as it is done in a respectful manner. Furthermore, this bill provides that one official State of Florida flag, POW-MIA flag, or a flag that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard may be displayed below the United States Flag. This flag must not be larger than 3 feet by 5 feet. This bill does not place any restrictions on which days the flags may be displayed.

¹ Section 720.301(9), F.S.

² Section 720.301(3), F.S.

³ A covenant runs with the land when it relates to the land and binds the successor grantees indefinitely.

⁴ Section 720.301(4), F.S.

⁵ *Gerber v. Longboat Harbour North Condominium, Inc.* 724 F. Supp. 884, 887-888 (D. Fla. 1989).

⁶ *Id.*

This bill specifies that its provisions do not apply to condominiums.

C. SECTION DIRECTORY:

Section 1 amends s. 720.304, F.S., relating to the right of owners to display a flag.

Section 2 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Right to a Portable Flag

This bill provides that a homeowner may display a flag on a freestanding flagpole. However, this bill removes language which allows a homeowner to display a removable, portable flag. Therefore, this bill may be interpreted to remove the current right of a homeowner to display a portable flag.

Roadways and Easements

Most residential lots are subject to one or more easements for road, drainage, or utility purposes. To the extent that this bill may allow a flagpole to be erected within an easement, it may unreasonably affect easement rights and usage.

D. STATEMENT OF THE SPONSOR

No Statement Submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 5, 2008, the Committee on Courts adopted one amendment to this bill. The amendment made the following revisions to the bill:

- Removes the provision that would have eliminated the right to fly a portable, removable flag.

- Provides that a flagpole may not be erected within any easements or obstruct sight lines at intersections.
- Provides that, in addition to mandatory homeowners associations, s. 720.304, F.S., will apply to nonmandatory homeowners' associations and community development districts.⁷

The bill was then reported favorably with an amendment.

⁷ A nonmandatory homeowners' association is an association made of parcel ownership where membership in the association is *not* a mandatory condition of parcel ownership. Community development districts are communities formed under ch. 190, F.S., which are similar to homeowners' associations.