

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 857 Display of Flags
SPONSOR(S): Safety & Security Council; 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>14 Y, 0 N, As CS</u>	<u>Webb/Davis</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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 also display a United States flag and another official flag on a freestanding flagpole not more than 20 feet high on any portion of a homeowner's property regardless of any homeowners' association rules or declarations as long as it does not obstruct sight lines and is not erected in an easement.

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 also display one official United States Flag not larger than 4 1/2 feet by 6 feet on a pole not to exceed 20 feet in height on any portion of a homeowner's property as long as it does not obstruct sight lines at intersections and is not erected within an easement. 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 be equal or smaller in size than the United States flag. 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 the provisions of s. 720.504, F.S., apply to all homeowners associations including nonmandatory homeowners associations⁷ and community development districts⁸.

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:

⁷ A nonmandatory homeowners' association is an association of parcel owners who are not authorized to impose assessments which may become a lien on the parcel.

⁸ A community development district is a statutory association which operates similarly to a homeowners' association.

None.

B. RULE-MAKING AUTHORITY:

None.

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 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.⁹

The bill was then reported favorably with an amendment.

On March 19, 2008, the Safety & Security Counsel reported the bill favorably as a counsel substitute. This analysis is drafted to the counsel substitute.

⁹ 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.