

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 323 Flag Etiquette
SPONSOR(S): Moskowitz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N	Stramski	Williamson
2) State Affairs Committee	17 Y, 0 N, As CS	Stramski	Camechis

SUMMARY ANALYSIS

While there are currently a number of statutes requiring display of the national flag, the state flag, and the POW-MIA flag, there do not appear to be any statutes requiring that a flag be flown at half-staff for particular persons or in particular circumstances. The Governor’s Office has a written protocol relating to when and for whom flags may be flown at half-staff.

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, military servicemembers, and prominent citizens. The bill also authorizes the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Display of Flags

Current law provides requirements regarding the display of the national flag, the state flag, and the POW-MIA flag. For example, the national and state flags must be displayed at public schools,¹ and the national flag must be displayed at the state capitol and each county courthouse if weather permits.² Each state-owned building at which the national flag is displayed must display the POW-MIA flag if such flag is available free of charge to the agency that occupies the building.³

Current law does not provide any requirements for flying a flag at half-staff for particular persons or in particular circumstances.

Flag Protocol

The Governor's Office has a written protocol relating to when and for whom flags may be flown at half-staff.⁴

According to the Governor's protocol, by order of the President of the United States or the Governor, the national flag must be flown at half-staff upon the death of principal figures of the United States or state government as a mark of respect to their memory, pursuant to 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy. The national flag is flown at half-staff at all federal buildings, all state-owned buildings, and, in most cases, all courthouses and city halls throughout Florida for specified periods on national occasions proclaimed by the President of the United States and after the death of the following persons:

- President or former President of the United States.
- Vice President or former Vice President of the United States.
- Chief Justice, former Chief Justice, or an Associate Justice of the United States Supreme Court.
- Speaker of the United States House of Representatives.
- Secretary of an executive or military department.
- President Pro Tempore of the United States Senate.
- Majority Leader or Minority Leader of the United States House of Representatives.
- Governor or former Governor of Florida.
- Member or former member of the Florida Cabinet.
- Justice or former Justice of the Florida Supreme Court.
- Member or former member of Congress from Florida.
- Member or former member of the Florida Legislature.
- State, county, district, or city official.
- Prominent citizens.

The protocol also provides that the Governor may order or proclaim that the state flag be flown at half-staff after the death of the above listed persons.

The protocol further states that the Governor may proclaim that the national and state flags be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active duty. The Governor, by proclamation, may have the flags flown at half-staff at the state Capitol and the county courthouse and city hall where the deceased servicemember resided.⁵

¹ Sections 256.032 and 1000.06, F.S.

² Section 256.01, F.S.

³ Section 256.12, F.S.

⁴ *Flag Protocol*, Executive Office of the Governor. Available at <http://www.flgov.com/wp-content/uploads/2012/09/EOG-Flag-Protocol-FINAL1.pdf> (last visited March 11, 2013).

⁵ 4 U.S.C. s. (7)(m).

The protocol provides that, if timely requested, the Governor may approve flying the national and state flags at half-staff for a police officer or firefighter who dies in the line of duty and for a state employee. The flags are flown at half-staff at the city hall and courthouse where the deceased lived. The Governor may use his discretion as to whether he or she will grant any request for flying flags at half-staff at state buildings or facilities or other local buildings or facilities on a case-by-case basis. The Executive Assistant of the Governor's Legal Office notifies the requestor by e-mail if the request is granted and the requestor notifies the appropriate local officials. The flags are flown at half-staff one day only, from sunrise to sunset, giving deference to the family's day of preference.

Additionally, a constituent may request flags be flown at half-staff for any reason not addressed in the protocol. The Governor has the discretion whether to grant or deny the request.⁶

Effect of the Bill

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, military servicemembers, and prominent citizens. The bill also authorizes the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

It is unclear what the practical effect of the bill will be, as the Governor has adopted a protocol addressing the flying of the flag on the occasions specified in the bill.

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1 creates s. 256.15, F.S., requiring that the Governor adopt a protocol on flag display.

Section 2 provides an effective date of July 1, 2013.

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

⁶ *Flag Protocol*, supra at fn. 1.
STORAGE NAME: h0323c.SAC
DATE: 3/29/2013

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

See RULE-MAKING AUTHORITY.

B. RULE-MAKING AUTHORITY:

It is unclear if the protocol that is to be adopted pursuant to this bill is in the nature of an agency rule that comes under the ambit of the Administrative Procedure Act (APA).⁷ The APA defines a rule in relevant part as an “agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency...”⁸ The Governor is covered by this provision.⁹

If the Governor’s flag protocol mandated by this bill would require compliance or otherwise have the consistent effect of law, the protocol would have to be promulgated in accordance with the rulemaking procedures of the APA.¹⁰

Additionally, if the requirement to adopt a protocol relating to the display of the state flag is a delegation of rulemaking authority, the bill would have to contain sufficient standards for the implementation of the protocol; the Legislature cannot delegate unrestricted discretion to enact or apply law.¹¹ In other words, some minimal standards and guidelines to be followed would have to be provided by the delegating legislation.¹² It is unclear whether the provision in the bill that permits the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag would meet the applicable standard for a proper delegation of power by the Legislature.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2013, the State Affairs Committee adopted a proposed amendment to House Bill 323 and reported the bill favorably as a committee substitute. The amendment includes military servicemembers in the class of people for whose death the Governor may order the state flag to fly at half-staff.

This bill analysis is drafted to the committee substitute as passed by the State Affairs Committee.

⁷ Chapter 120, F.S.

⁸ Section 120.52(16), F.S.

⁹ Section 120.52(1), F.S., in part defining “agency” as “[t]he Governor...”

¹⁰ *Coventry First, LLC v. State, Office of Ins. Regulation*, 38 So.3d 200, 203 (Fla. 1st DCA, 2010) (internal citations omitted).

¹¹ *Bush v. Schiavo*, 885 So.2d 321 (Fla. 2004); Art. II, s. 3, Fla. Const.

¹² *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978)