

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 Committee on Community Affairs

BILL: CS/SB 1454

INTRODUCER: Regulated Industries Committee and Senator Gruters

SUBJECT: Homeowners' Right to Display and Store Items

DATE: April 3, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | Fav/CS |
| 2. | <u>Hunter</u> | <u>Ryon</u> | <u>CA</u> | Favorable |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1454 expands the types of flags that a homeowner may display as a portable, removable flag display or on a flagpole, notwithstanding any covenant, restriction, bylaw, or requirement of a homeowners' association. Under the bill, a homeowner may display up to two of:

- The United States flag;
- The official flag of the State of Florida;
- A flag that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard;
- A POW-MIA flag; or
- A first responder flag that may incorporate the design of any other flag permitted under this paragraph to form a combined flag.

The bill defines the term "first responder flag" to mean a flag that recognizes and honors the service of any of the following:

- Law enforcement officers;
- Firefighters;
- Paramedics or emergency medical technicians;
- Correctional officers;
- 911 public safety telecommunicators;
- Advanced practice registered nurses, licensed practical nurses, or registered nurses;

- Persons participating in a statewide urban search and rescue program developed by the Division of Emergency Management; or
- Federal law enforcement officers.

Regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, current law permits members of a homeowners' association to display one portable, removable United States flag or official flag of the State of Florida in a respectful manner. Under current law, homeowners may also display one portable, removable official flag, in a respectful manner, not larger than 4.5 feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, or a POW-MIA flag.

The bill also provides that, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, and unless prohibited by general law or local ordinance, an association may not restrict parcel owners or their tenants from storing or displaying any items on a parcel which are not visible from the parcel's frontage or an adjacent parcel, including, but not limited to, artificial turf, boats, flags, and recreational vehicles.

The bill takes effect July 1, 2023.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to nonprofit corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners² or their agents, or a combination thereof, 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."³ Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.⁴

Homeowners' associations are administered by a board of directors whose members are elected.⁵ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to

¹ See s. 720.302(1), F.S.

² Section 720.301(12), F.S., defines the term "parcel owner" to mean the record owner of legal title to a parcel.

³ Section 720.301(9), F.S.

⁴ Section 720.302(5), F.S.

⁵ See ss. 720.303 and 720.307, F.S.

these documents.⁶ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁷

Homeowners' associations mainly differ from condominiums in the type of property individually owned. Condominium unit owners essentially own airspace within a building, whereas homeowner association members own a parcel of real property or land.

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, F.S., the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 F.S., are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The Division of Florida Condominiums, Timeshares, and Mobile Homes in the Department of Business and Professional Regulation has some oversight, however, for homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.⁸

Display of Flags

Regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, members of a homeowners' association may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner. Homeowners may also display one portable, removable official flag, in a respectful manner, not larger than 4.5 feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, or a POW-MIA flag.⁹

Additionally, homeowners may erect a freestanding flagpole that is no more than 20 feet high on any portion of the homeowner's real property, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, if the flagpole does not obstruct sightlines at

⁶ See ss. 720.301 and 720.303, F.S.

⁷ Section 720.303(1), F.S.

⁸ See s. 720.306(9)(c), F.S.

⁹ Section 720.304(2)(a), F.S.

intersections and is not erected within or upon an easement. From the flagpole, the homeowner may display in a respectful manner one official United States flag, not larger than 4.5 feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, Space Force, or Coast Guard, or a POW-MIA flag.¹⁰

The additional flag on the flagpole must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the governing documents.¹¹

The right of homeowners in homeowners' associations to display the listed flags applies to all community development districts and homeowners' associations, regardless of whether such homeowners' associations are authorized to impose assessments that may become a lien on the parcel.¹²

Fines

Homeowners' associations may levy fines against an owner, and an owner's tenants, guests, or invitees must comply with ch. 718, F.S., the governing documents¹³ of the community, and the rules of the association.¹⁴ A homeowners' association may levy reasonable fines not exceeding \$100 per violation against any owner of a parcel or its occupant, licensee, or invitee. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000 in the aggregate if the association's governing documents authorize the fine.¹⁵ A fine by a homeowners' association of less than \$1,000 may not become a lien against the parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.¹⁶

An association's board may not impose a fine or suspension unless it gives at least 14 days written notice of the fine or suspension, and an opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.¹⁷

A fine approved by the committee is due five days after notice of an approved fine is sent to the unit or parcel owner and, if applicable, to any tenant, licensee, or invitee of the owner.¹⁸

¹⁰ Section 720.304(2)(b), F.S.

¹¹ *Id.*

¹² Section 720.304(2)(c), F.S.

¹³ Section 720.301(8), F.S., defines the term "governing documents" to mean the recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and the articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.

¹⁴ Section 720.305(1), F.S.

¹⁵ Section 720.305(2), F.S.

¹⁶ Sections 720.305(2), F.S.

¹⁷ Sections 720.305(2)(b), F.S.

¹⁸ *Id.*

III. Effect of Proposed Changes:

Display of Flags

The bill amends s. 720.304(2), F.S., to expand the types of flags that a homeowner may display as a portable, removable flag display or on a flagpole, notwithstanding any covenant, restriction, bylaw, or requirement of a homeowners' association. Under the bill, a homeowner may display up to two of:

- The United States flag;
- The official flag of the State of Florida;
- A flag that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard;
- A POW-MIA flag; or
- A first responder flag that may incorporate the design of any other flag permitted under this paragraph to form a combined flag.

The bill defines the term “first responder flag” to mean a flag that recognizes and honors the service of any of the following:

- Law enforcement officers as defined in s. 943.10(1), F.S.¹⁹
- Firefighters as defined in s. 112.191(1), F.S.²⁰
- Paramedics or emergency medical technicians as those terms are defined in s. 112.1911(1), F.S.²¹
- Correctional officers as defined in s. 943.10(2), F.S.²²
- 911 public safety telecommunicators as defined in s. 401.465(1), F.S.²³

¹⁹ Section 943.10(1), F.S., defines the term “law enforcement officer” to mean, in part, “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.”

²⁰ Section 112.191(1)(b), F.S., defines the term “firefighter” to mean “any duly employed uniformed firefighter employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified pursuant to s. 633.408[, F.S.,] and who is a member of a duly constituted fire department of such employer or who is a volunteer firefighter.”

²¹ *Id.*

²² Section 943.10(2), F.S., defines the term “correctional officer” to mean “any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.”

²³ Section 401.465(1)(a), F.S., defines the term “911 public safety telecommunicator” to mean “a public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls; dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency; providing real-time information from federal, state, and local crime databases; or supervising or serving as the command officer to a person or persons having such duties and responsibilities. However, the term does not include administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel.”

- Advanced practice registered nurses, licensed practical nurses, or registered nurses as those terms are defined in s. 464.003, F.S.²⁴
- Persons participating in a statewide urban search and rescue program developed by the Division of Emergency Management under s. 252.35, F.S.
- Federal law enforcement officers as defined in 18 U.S.C. s. 115(c)(1).²⁵

Display and Storage of Items

The bill creates s. 720.3045, F.S., to provide that, regardless of any covenants, restrictions, bylaws, rules, or requirements of the association, and unless prohibited by general law or local ordinance, an association may not restrict parcel owners or their tenants from storing or displaying any items on a parcel which are not visible from the parcel's frontage or an adjacent parcel, including, but not limited to, artificial turf, boats, flags, and recreational vehicles.

The bill amends s. 720.3075, F.S., to prohibit a homeowners' association documents from preventing the respectful display of up to two of the authorized flags.

Effective Date

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²⁴ Section 464.003(2), F.S., defines the term "advanced or specialized nursing practice" to mean, in part, "in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the board which, by virtue of postbasic specialized education, training, and experience, are appropriately performed by an advanced practice registered nurse." Section 464.003(21), F.S., defines the term "licensed practical nurse" to mean "any person licensed in this state or holding an active multistate license under s. 464.0095[, F.S.,] to practice practical nursing." Section 464.003(21), [F.S.,] defines the term "registered nurse" to mean "any person licensed in this state or holding an active multistate license under s. 464.0095[, F.S.,] to practice professional nursing."

²⁵ 18 U.S.C. s. 115(c)(1) defines the term "federal law enforcement officer" to mean "any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law."

E. Other Constitutional Issues:

Impairment of Contract

The governing documents of a homeowners' association are a contract. To the extent this bill affects previously recorded governing documents by prohibiting the enforcement of restrictions in those documents related to the display of flags or the storage or display of items, the bill may unconstitutionally impair a contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, "No... law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that "No state shall . . . pass any . . . law impairing the obligation of contracts."

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,²⁶ the Florida Supreme Court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether a state law operates as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Was the law enacted to deal with a broad, generalized economic or social problem;
- Does the law operate in an area that was already subject to state regulation at the time the contract was entered into; and
- Is the law's effect on the contractual relationships temporary or is it severe, permanent, immediate, and retroactive.²⁷

Free Speech Rights

CS/SB 1454 may implicate the free speech rights in the First Amendment of the United Constitution and section 4 of Article 1 of the State Constitution as a content-based restriction on expressive conduct by specifying and limiting the types of flags that a homeowner has the right to display notwithstanding any covenant, restriction, bylaw, or requirement of a homeowners' association.

Generally, the enforcement of covenant restrictions restricting speech, such as limiting the display of signs on a parcel, does not constitute sufficient state action to render the parties' purely private contracts relating to the ownership of real property unconstitutional.²⁸ However, laws regulating the display of signs, flags, and other means of graphic communication have been found to violate the constitutional guarantee of free speech. In *Dimmitt v. City of Clearwater*, 985 F.2d 1565 (1993), the city's comprehensive

²⁶ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

²⁷ *Id.* at 779.

²⁸ See *Quail Creek Property Owners Ass'n, Inc. v. Hunter*, 538 So.2d 1288 (Fla. 2nd DCA 1989).

land development code required a permit for the display of signs but exempted from the permit requirement a limited number of flags representing a government unit or body, e.g., the U.S. flag, a state flag, or a city flag.²⁹ The court held that, by exempting only government flags from the permit requirement, the city ordinance unconstitutionally restricted expressive conduct based upon content.³⁰

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. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 720.304 and 720.3075.

The bill creates section 720.3045 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 21, 2023:

The CS further limits the parcel owner’s right to store or display items to limit the right to items that are not visible from an adjacent parcel. Under the bill, the right to store or display items is limited only to items that are not visible from the parcel’s frontage. The CS also changes the title of the bill to “An act relating to Homeowners’ Right to Display and Store Items.”

²⁹ *Dimmitt v. City of Clearwater*, 985 F.2d 1565 (11th Cir. 1993).

³⁰ *Id.* at 1573.

B. Amendments:

None.

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