

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 901 Display of Flags by Governmental Entities

SPONSOR(S): Borrero and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	9 Y, 5 N	Poreda	Miller
2) State Affairs Committee			

SUMMARY ANALYSIS

Current law regulates the display of certain flags at specified locations in the state. The United States flag, the Florida state flag, and the POW-MIA flag must be displayed at certain venues on specified days. In addition, the Firefighter Memorial Flag and the Honor and Remember Flag may be displayed at certain locations and events at specified times.

The bill specifies that governmental entities, as defined in the bill, are prohibited from erecting or displaying a flag that represents a political viewpoint, including, but not limited to, a politically partisan, racial, sexual orientation and gender, or political ideology viewpoint. Governmental entities must remain neutral when representing political viewpoints in displaying or erecting flags, but they are allowed to display any flag required by general law. The bill expressly does not limit a private individual's ability to exercise their rights protected by the First Amendment to the United States Constitution.

The bill requires that any governmental entity displaying the flag of the United States must display the flag in a prominent position superior to any other flag displayed at the same time.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

United States Flag Code

The United States Flag Code (Code) establishes advisory rules for display and care of the national flag of the United States of America (U.S.).¹ In addition to the Code, Congress has designated the national anthem and set out the proper conduct when it is played with the flag present.² The Code is designed as a guide for use by all citizens and citizen groups that may not be associated directly with the federal government.³ As a result, the Code does not prescribe any penalties for non-compliance nor does it include enforcement provisions. The Code does not purport to cover all possible situations, although it does empower the President of the United States to alter, modify, repeal, or prescribe additional rules regarding the flag.⁴

Display of Flags in Florida

Flags of the United States and the State of Florida

Current Florida law requires the U. S. flag and Florida state flag be displayed in certain venues. The U.S. flag must be displayed daily, when the weather permits, at the state capitol, at every county courthouse,⁵ at every publicly supported and controlled auditorium,⁶ and on the grounds and in the classrooms of public K-20 educational institutions.⁷ The U.S. flag also must be displayed at each polling station on election days.⁸

The state flag must be displayed daily, when the weather permits, on the grounds of every public K-20 educational institution in the state, except when the institution or school is closed for vacation.⁹ The Governor is required to adopt a protocol on state flag display.¹⁰ The protocol must provide guidelines for the proper display of the flag and for the lowering of the 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, and prominent citizens.¹¹

POW-MIA Flag

A POW-MIA flag must be displayed at each state-owned building at which the U.S. flag is displayed if the POW-MIA flag is available free of charge to the agency that occupies the building and if such display is in accordance with federal laws and regulations.¹² The Department of Transportation also must display the flag year round at each rest area along an interstate highway in the state.¹³ In addition, the Department of Environmental Protection must display the POW-MIA flag year round at each state park where the U.S. flag is displayed.¹⁴

Firefighter Memorial Flag

¹ 4 U.S.C. § 4-10.

² 36 U.S.C. § 301.

³ 4 U.S.C. § 5.

⁴ 4 U.S.C. § 10.

⁵ S. 256.01, F.S.

⁶ S. 256.11, F.S.

⁷ S. 1000.06(1), F.S.

⁸ S. 256.011(1), F.S.

⁹ Ss. 256.032 and 1000.06(1), F.S.

¹⁰ S. 256.015(1), F.S.

¹¹ *Id.*

¹² S. 256.12, F.S.

¹³ S. 256.13, F.S.

¹⁴ S. 256.14, F.S.

The Division of State Fire Marshal in the Department of Financial Services is directed by law to design, produce, and implement the creation and distribution of an official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty.¹⁵ The flag may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.¹⁶

Honor and Remember Flag

The Honor and Remember Flag is designated as the state's emblem of the service and sacrifice of those personnel of the U. S. Armed Forces who have given their lives in the line of duty.¹⁷ The flag may be displayed at state-owned buildings, state owned military memorials, or any other state-owned location on Veterans Day (November 11), Gold Star Mother's Day (last Sunday in September), or when a member of the armed forces who is a resident of the State of Florida is killed in the line of duty.¹⁸ The flag must be manufactured in the U.S. if it is displayed.¹⁹

Freedom of Speech and Expression

The First Amendment to the United States Constitution²⁰ was adopted on December 15, 1791, as one of the first ten amendments constituting the Bill of Rights. It prevents the Federal government from making laws prohibiting the free exercise of religion or restricting the freedom of speech, freedom of the press, freedom of assembly, or the right to petition the government.

The U.S. Supreme Court (Court) characterized the rights of free speech and free press as fundamental personal rights and that the exercise of these rights lies at the foundation of a free government.²¹ The Court further explained erroneous statements, as well as statements criticizing public policy and the implementation of those policies, must similarly be protected.²² However, while the Court continues to emphasize the "First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content",²³ it also has stated that the protection of free speech and free press given by the First Amendment is not limitless and does not guarantee "the right to express any thought, free from government censorship."²⁴

Freedom of speech and freedom of the press is further protected by the Florida Constitution.²⁵

Effect of the Bill

The bill specifies that governmental entities are prohibited from erecting or displaying a flag that represents a political viewpoint, including, but not limited to, a politically partisan, racial, sexual orientation and gender, or political ideology viewpoint. Governmental entities must remain neutral when representing political viewpoints in displaying flags. Governmental entities also are allowed to display any flag required by general law. The bill expressly does not limit a private individual's ability to exercise their rights protected by the First Amendment to the United States Constitution.

¹⁵ S. 256.15, F.S.

¹⁶ S. 256.15(1), F.S.

¹⁷ S. 256.16(1), F.S.

¹⁸ S. 256.16(2)(a) and (b), F.S.

¹⁹ S. 256.16(3), F.S.

²⁰ "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." Amend. I, U.S. CONST.

²¹ *Schneider v. State*, 308 U.S. 147 (1939).

²² *Bond v. Floyd*, 385 U.S. 116 (1966).

²³ *Chicago Police Dept. v. Mosley*, 408 U.S. 92 (1972).

²⁴ *Id.*

²⁵ "Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated." Art. I, s. 4, FLA. CONST.

The bill requires that any governmental entity displaying the flag of the United States must display the flag in a prominent position superior to any other flag displayed at the same time.

B. SECTION DIRECTORY:

Section 1. Creates s. 256.045, F.S., relating to display of flags, governmental agencies, local governments, or other units of local government.

Section 2. Provides an effective date of July 1, 2024.

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:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The term "governmental entity" is defined in the bill to mean a governmental agency, a local government, or another unit of local government and includes public schools, public colleges, and public universities. However, the bill does not clarify whether "governmental agency" pertains to state government. The bill is unclear as to whether "local government" or "unit of local government" includes counties, municipalities, special districts, or school districts, or whether the reference to "public schools" includes each school district. The terms "political viewpoint" and "political ideology viewpoint" are undefined and the bill is unclear as to whether those terms include flags of other countries, military flags, or flags of a historic nature. Finally, the bill is unclear whether the phrase "displaying a flag" includes other type of displays such as pictures or posters of flags or worn items such as flag lapel pins.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES