

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 181 w/CS Condominiums/Armed Services Flags  
**SPONSOR(S):** Ambler  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 260

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary</u>	<u>19 Y, 0 N w/CS</u>	<u>Havlicak</u>	<u>Havlicak</u>
2) <u>Veterans' &amp; Military Affairs (Sub)</u>	<u>8 Y, 0 N</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
3) <u>Local Government &amp; Veterans' Affairs</u>	<u>14 Y, 0 N w/CS</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
4) <u>Business Regulation</u>	<u></u>	<u>Gallen</u>	<u>Liepshutz</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Current law authorizes condominium owners to display a United States flag in a respectful way despite any declaration rules or requirements to the contrary. This bill extends that statutory provision to permit the display of official size military flags on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day. The dimensions are provided in the bill.

This bill does not appear to have any fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0181e.br.doc  
**DATE:** April 4, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Chapter 718, F.S., contains Florida’s Condominium Act. The Act establishes laws and procedures for the creation, sale and operation of condominiums.<sup>1</sup> Section 718.113(4), F.S., was enacted in 1989<sup>2</sup> to permit condominium owners to “display one portable, removable United States flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations.”<sup>3</sup>

This bill amends s. 718.113(4), F.S., to expand that authorization to include the display of the Armed Services flags on military and patriotic holidays. The bill specifies flag dimensions. The flags and U.S. holidays are shown below.



**United States Air Force Flag**



**United States Army Flag**



**United States Navy Flag**



**United States Marine Corps Flag**

<sup>1</sup> See s. 718.102, F.S.

<sup>2</sup> See s. 1, Chapter 89-161, Laws of Florida.

<sup>3</sup> A similar provision is found in s. 720.3075(3), F.S., pertaining to homeowners’ associations.



Patriotic Holidays include:

- Memorial Day
- Independence Day
- Patriot Day (newly created to recognize events of September 11)
- Veterans Day

Military Holidays include:

- Air Force: August 1<sup>st</sup> <sup>4</sup>
- Army: April 6<sup>th</sup> <sup>5</sup>
- Marines: November 10<sup>th</sup>
- Navy: October 27<sup>th</sup> <sup>6</sup>
- Coast Guard: August 4<sup>th</sup>
- Armed Forces Day: 3<sup>rd</sup> Saturday in May<sup>7</sup>

**United States Coast Guard Flag**

Other holidays often celebrated by military members and patriotic citizens include:

- Pearl Harbor Day: December 7<sup>th</sup>
- Columbus Day: 2<sup>nd</sup> Monday in October
- Presidents Day: 3<sup>rd</sup> Monday in February
- Election Day: 1<sup>st</sup> Tuesday in November
- Flag Day: June 14<sup>th</sup>

**C. SECTION DIRECTORY:**

Section 1. Subsection (4) of s. 718.113(4), F.S., relates to condominium owners' right to display certain flags; specifies flag dimensions. .

Section 2. Provides an effective date of July 1, 2003.

**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:

<sup>4</sup> September 18<sup>th</sup> is celebrated as the Air Force's birthday.

<sup>5</sup> June 14<sup>th</sup> is celebrated as the Army's birthday.

<sup>6</sup> "Navy Day" is celebrated on October 27<sup>th</sup> and is separate from the Navy's birthday on October 13<sup>th</sup>. Navy Day was sponsored by the Navy League and was designated October 27<sup>th</sup> because it is Teddy Roosevelt's birthday as well.

<sup>7</sup> Armed Forces Day was designed so that the birthdays of each branch could be celebrated together. This single-day celebration stemmed from the unification of the Armed Forces under the Department of Defense.

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:

None.

2. Other:

#### IMPAIRMENT OF CONTRACTS

Article I, Section 10, of the Constitution of the United States is the "Contract Clause" that prohibits states from passing laws which substantially impair contract rights.<sup>8</sup> Also, common law provides that the government cannot adversely affect substantive rights once such rights have vested.<sup>9</sup> To determine whether a particular regulation violates the Contract Clause, courts use a balancing test. Courts measure the severity of contractual impairment against the importance of the interest advanced by the regulation and also look at whether the regulation is reasonable and narrowly tailored to the state's interest.<sup>10</sup> This bill may impair existing contractual rights because many condominium owners have contractually agreed to abide by certain regulations<sup>11</sup> and have relied on the enforcement of these regulations in purchasing their condominiums. This bill may invalidate, in part, such contractual agreements. Accordingly, this bill may implicate the Contract Clause of the United States Constitution.

In *Gerber v. Longboat Harbour North Condominium, Inc.*<sup>12</sup> an Air Force veteran initiated a law suit which raised freedom of speech issues by challenging a condominium association's regulation prohibiting the displaying of an American flag except on designated occasions. The United States District Court, Middle District of Florida, granted summary judgment to the plaintiffs and held that enforcement of private agreements by the judicial branch is sufficient to implicate state action and therefore the defendant's actions deprived the plaintiffs of the rights, privileges, and immunities secured by the First and Fourteenth Amendments to the United States Constitution.<sup>13</sup> The Court stated in dicta that the Florida Legislature, in enacting s. 718.113, F.S., had merely recognized the plaintiffs' previously existing federal constitutional right to display the flag; it had not created rights and therefore not impaired existing contract rights.<sup>14</sup>

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<sup>8</sup> *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1923).

<sup>9</sup> *Bitterman v. Bitterman*, 714 So. 2d 356 (Fla. 1998).

<sup>10</sup> *Allied Structural Steel v. Spannaus*, 438 U.S. 234 (1978).

<sup>11</sup> When purchasing a condominium, the contract includes references to the restrictive covenants that regulate the property. Restrictive covenants are recorded in the official records in the county in which the property is located.

<sup>12</sup> 724 F. Supp. 884 (D. Fla. 1989)

<sup>13</sup> *Id.* at 887. The First Amendment to the U.S. Constitution guarantees free speech and is made applicable to the states through the Fourteenth Amendment.

<sup>14</sup> *Id.* On a motion to reconsider, the federal District Court, finding that its earlier decision granting summary judgment was inappropriate, partially vacated its earlier judgment. The court reaffirmed the portion of its earlier decision dealing with state action but vacated the remainder of the decision holding that there were material issues of fact pertaining to the manner in which the flag was displayed that needed to be decided by the trier of fact. See *Gerber v. Longboat Harbour North Condominium, Inc.*, 757 F.Supp. 1339, 1342 (D. Fla. 1991).

Similarly in Florida's Constitution, Article I, Section 10, of the Florida Constitution provides, in relevant part, "[n]o . . . law impairing the obligation of contracts shall be passed." The Florida Supreme Court discussed several factors for determining whether a government impairment of private contracts is permissible.<sup>15</sup> The court explained that it must weigh the degree of impairment against "the evil which [the regulation] seeks to remedy."<sup>16</sup> This analysis "requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power."<sup>17</sup> The public purpose in imposing the regulation must be significant and legitimate, and the regulation must not unreasonably intrude into the parties' bargain to a degree greater than is necessary to achieve the stated public purpose.<sup>18</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Armed Forces day is designed so that each military branch could be celebrated together. The bill text does not include the military holiday of each branch as days on which flags may be displayed. These military branches have official flags. See pages 3 and 4 of analysis for a list of these military holidays and their official flags.

Confusion may arise as to whether military branch flags may be displayed on their specific holiday, other than Armed Forces Day.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Judiciary adopted two amendments on March 5, 2003. The first amendment specifically identified that official flags representing the United States Army, Navy, Air Force, Marine Corps and Coast Guard may be flown on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day. The second amendment added the word "size" after the word "official", relating to the flags.

The Subcommittee on Veterans' & Military Affairs recommended one amendment on March 20, 2003. The amendment will remove "official size flags" from the bill and replace it with "official flags, no larger than four feet six inches by six feet". These dimensions encompass the official size or smaller and allow for slight manufacturing variances. According to the sponsor, this is in accordance with an executive order 10679 [Army, 6/12/56] and executive order 10812 [Navy, 4/24/59] establishing flag designs.

The Committee on Local Government & Veterans' Affairs adopted the amendment and passed the bill on March 27, 2003.

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<sup>15</sup> *Pomponio v. Cladridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980).

<sup>16</sup> *Id.* at 780.

<sup>17</sup> *U.S. Fidelity & Guaranty Co. v. Department of Insurance*, 453 So.2d 1355, 1360 (Fla.1984)

<sup>18</sup> *Pomponio*, 378 So.2d at 780