

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

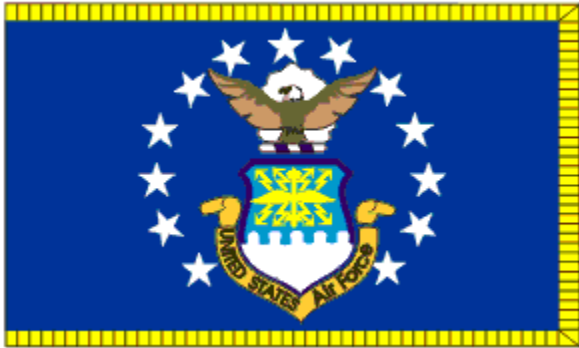
- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | 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 contains Florida’s Condominium Act. It establishes laws and procedures for the creation, sale and operation of condominiums.¹ Section 718.113(4), F.S., was enacted in 1989² 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.”³

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 flags and holidays are shown below.



United States Air Force Flag



United States Army Flag



United States Navy Flag



United States Marine Corps Flag

¹ See s. 718.102, F.S.

² See s. 1, Chapter 89-161, Laws of Florida.

³ 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: September 18th
- Army: June 14th
- Marines: November 10th
- Navy: October 13th⁴
- Coast Guard: August 4th
- Armed Forces Day: 3rd Saturday in May⁵

United States Coast Guard Flag

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

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

C. SECTION DIRECTORY:

Section 1 amends s. 718.113(4), F.S., relating to condominium owners' right to display flags.

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:

None.

⁴ "Navy Day" is celebrated on October 27th and is separate from the Navy's birthday on October 13th. Navy Day was sponsored by the Navy League and was designated October 27th because it is Teddy Roosevelt's birthday as well.

⁵ 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.

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 require counties or municipalities to spend funds or take action which requires the expenditures of funds.

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.⁶ Also, common law provides that the government cannot adversely affect substantive rights once such rights have vested.⁷ 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.⁸ This bill may impair existing contractual rights because many condominium owners have contractually agreed to abide by certain regulations⁹ 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.*¹⁰ 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.¹¹ 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.¹²

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

⁶ *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1923).

⁷ *Bitterman v. Bitterman*, 714 So. 2d 356 (Fla. 1998).

⁸ *Allied Structural Steel v. Spannaus*, 438 U.S. 234 (1978).

⁹ 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.

¹⁰ 724 F. Supp. 884 (D. Fla. 1989)

¹¹ *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.

¹² *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).

several factors for determining whether a government impairment of private contracts is permissible.¹³ The court explained that it must weigh the degree of impairment against "the evil which [the regulation] seeks to remedy."¹⁴ 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."¹⁵ 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.¹⁶

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It appears that the language of the bill could be interpreted to authorize the display of all military flags (along with the American flag) on military and patriotic holidays.

This bill does not set forth which holidays constitute "military and patriotic holidays." This could lead to disagreements between condominium owners and their associations as to when the Armed Services flags can be flown.

The sponsor of the bill has indicated that he will be filing an amendment that identifies the specific holidays on which the military flag may be flown. The holidays identified in the amendment are: Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

¹³ *Pomponio v. Cladrige of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980).

¹⁴ *Id.* at 780.

¹⁵ *U.S. Fidelity & Guaranty Co. v. Department of Insurance*, 453 So.2d 1355, 1360 (Fla.1984)

¹⁶ *Pomponio*, 378 So.2d at 780