

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 260  
 SPONSOR: Senator Fasano  
 SUBJECT: Condominiums  
 DATE: January 23, 2003      REVISED: 02/18/03 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>MS</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill allows condominium owners to fly flags representing branches of the U. S. Armed Services on military and patriotic holidays.

This bill amends s. 718.113, Florida Statutes.

**II. Present Situation:**

In 1989, the Legislature created s. 718.113 (4), F.S., to provide that condominium unit owners “may display one portable, removable United States flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations.”

In 2000, the Legislature created s. 720.3075 (3), F.S., to prohibit homeowners association documents, articles of incorporation, or bylaws from precluding the display of one US flag by property owners, subject to some restrictions.<sup>1</sup> In October 2000 a Palm Beach Circuit Court ruled that a resident violated rules established by the subdivision’s homeowners’ association when he installed a flagpole on his property. The 4<sup>th</sup> District Court of Appeals affirmed the decision.<sup>2</sup>

In 2002, the Legislature amended s. s. 720.3075(3), F.S., to delete the authority of homeowners’ associations to set “reasonable standards” for flag size, placement, and safety. This provision clarified that homeowners’ association documents may not preclude the display of one “portable, removable” U.S. flag by property owners.<sup>3</sup> In addition, this law amended s. 720.304(2), F.S., to

<sup>1</sup> s. 47, ch. 2000-302, L.O.F

<sup>2</sup> *Andres v. Indian Creek Phase III-B Homeowners Association, Inc.* 788 So.2d 983 (Fla. 4th DCA 2001)

<sup>3</sup> s. 2, Chapter 2002-50, L.O.F.

allow homeowners to “display one portable, removable U.S. flag in a respectful way regardless of any declaration rules or requirements dealing with flags or decorations.”<sup>4</sup> This provision pertaining to homeowners is now identical to the provision pertaining to condominium owners.

### III. Effect of Proposed Changes:

**Section 1** amends s. 718.113(4), F.S., to allow condominium owners to display official flags representing the branches of the United States Armed Services on designated days that pertain to the military and patriotic holidays.

**Section 2** provides that the act will take effect July 1, 2003.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

This bill excuses homeowners from “declaration rules or requirements,” as adopted by the respective homeowner’s association or as specified in legal instruments by which the condominium is created. Retroactive application of this bill may raise the issue of impairing obligations of contracts.<sup>5</sup>

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.<sup>6</sup> The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.<sup>7</sup> In *Exxon Corp. v. Eagerton*<sup>8</sup>, the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

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<sup>4</sup> s. 1, Chapter 2002-50, L.O.F.

<sup>5</sup> s. 10, Art. I of the State Constitution and s. 10, Art. I of the U.S. Constitution.

<sup>6</sup> *Stone v. Mississippi*, 101 U.S. 814 (1880)

<sup>7</sup> *General Motors Corp. v. Romein*, 503 U.S. 181 (1992)

<sup>8</sup> 462 U.S. 176 (1983)

In 1989, the Federal District Court in Tampa held that the state statute permitting condominium unit owners to display the American Flag [s. 718.113(4), F.S.] did not impair existing contract rights of the condominium association to restrict such display. The court suggested in dicta that personal display of the flag is constitutionally protected speech, and because “the statute did not create rights, but merely recognized them, it does not impair existing contract rights.”<sup>9</sup>

Article I, Section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.<sup>10</sup> This exception extends to laws that are reasonable and necessary to serve an important public purpose,<sup>11</sup> to include protecting the public’s health, safety or welfare.<sup>12</sup>

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.<sup>13</sup>

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

The bill allows flags representing the branches of the US Armed Services on “military and patriotic” holidays. Because the bill does not define what constitutes such holidays, condominium owners and the respective home-owners association may disagree as to when the flags may be flown.

## VII. Related Issues:

None.

<sup>9</sup> *Gerber v. Longboat Harbour North Condominium, Inc.*, 724 F.Supp. 884 (M.D.FL., 1989)

<sup>10</sup> *Park Benziger & Co. v Southern Wine & Spirits, Inc.*, 391 So2d 681 (Fla. 1980)

<sup>11</sup> *Yellow Cab C. V. Dade County*, 412 So2d 395 (Fla. 3rd DCA 1982), petition den. 424 So2d 764 (Fla. 1982)

<sup>12</sup> *Khoury v Carvel Homes South, Inc.*, 403 So2d 1043 (Fla. 1st DCA 1981), petition den. 412 So2d 467 (Fla. 1981)

<sup>13</sup> *Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So2d 774 (Fla. 1979)

**VIII. Amendments:**

#1 by Comprehensive Planning:

Specifies which branches of the armed services and on which holidays the flags may be displayed.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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