

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 437 Homeowners' Right to Display Flags

**SPONSOR(S):** Civil Justice Subcommittee, Buchanan

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 1 N, As CS	Jones	Jones
2) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N	Wright	Anstead
3) Judiciary Committee			

### SUMMARY ANALYSIS

A homeowners' association (HOA) is a residential property owners association in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. An HOA is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Under current Florida law, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements to the contrary, a homeowner may display, in a respectful manner, one United States flag or official State of Florida flag; and one official POW-MIA flag or a flag representing a specified branch of the United States Armed Forces. A homeowner may also set up a freestanding flagpole no more than 20 feet high on his or her property, and display from that flagpole, in a respectful manner, one United States flag or official State of Florida flag; and one POW-MIA flag or a flag representing a specified branch of the United States Armed Forces.

Further, under current law, an HOA may not include in its documents any clause preventing the display of a United States flag. A homeowner who is prevented from exercising the right to display a flag or set up a flagpole may bring a civil action to enjoin the enforcement of the offending HOA provision at issue.

HB 437 amends s. 720.304, F.S., to provide that notwithstanding any covenant, restriction, bylaw, rule, or requirement of an HOA, a homeowner may display up to two of the following flags in a respectful manner:

- The United States flag.
- A flag that utilizes the same emblems and proportions utilized by the United States flag, regardless of the colors used, without any additional emblems or text.
- The official flag of the State of Florida.
- A flag that represents the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
- A POW-MIA flag.

The bill also provides that a homeowner may fly one United States flag and one flag from the list above from a freestanding flagpole.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Homeowners' Associations

A homeowners' association (HOA) is a residential property owners association in which voting membership is made up of parcel owners, 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.<sup>1</sup> Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in ch. 720, F.S., and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.

Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes, but no state agency has direct HOA oversight.

##### Statutorily Permitted Flags

Under current Florida law, regardless of any HOA covenants, restrictions, bylaws, rules, or requirements to the contrary, a homeowner may:

- Display, in a respectful manner:
  - One portable, removable United States flag or official State of Florida flag; and
  - One portable, removable official POW-MIA flag or a flag representing the United States:
    - Army.
    - Navy.
    - Air Force.
    - Marine Corps.
    - Space Force.
    - Coast Guard.
- Set up a freestanding flagpole no more than 20 feet high on his or her real property, subject to enumerated restrictions, and display from that flagpole, in a respectful manner:
  - One portable, removable United States flag or official State of Florida flag; and
  - One portable, removable official POW-MIA flag or a flag representing the United States:
    - Army.
    - Navy.
    - Air Force.
    - Marine Corps.
    - Space Force.
    - Coast Guard.<sup>2</sup>

A homeowner who is prevented from exercising these rights to display a flag or set up a flagpole may bring a civil action and obtain a court order enjoining the enforcement of the offending HOA provision at issue.<sup>3</sup>

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<sup>1</sup> S. 720.301(9), F.S.

<sup>2</sup> S. 720.304(2), F.S.

<sup>3</sup> S. 720.304(3), F.S.

Further, s. 720.3075, F.S., provides that an HOA may not include in its documents any clause preventing the display of a United States flag.<sup>4</sup>

### Strategic Lawsuits Against Public Participation

A “strategic lawsuit against public participation” (“SLAPP”) is a lawsuit brought against a person who has spoken out on issues of public importance for the sole purpose of intimidating such person or driving him or her into silence from the sheer burden and expense of having to defend the lawsuit.<sup>5</sup> The Florida Legislature has recognized that SLAPP lawsuits “are inconsistent with the right of persons to exercise . . . constitutional rights of free speech in connection with public issues.”<sup>6</sup>

To that end, Florida law prohibits both persons and governmental entities from filing a meritless lawsuit against another person or entity primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct government representatives, or to petition for redress of grievances before the various governmental entities of the state (“anti-SLAPP law”).<sup>7</sup> A person or entity sued in violation of the anti-SLAPP law may ask the court for:

- An order dismissing the action or granting final judgment in favor of such person or entity; or
- Summary judgment seeking a determination that the lawsuit violates the anti-SLAPP law.<sup>8</sup>

The court must then set a hearing on the motion, to be held at the earliest possible time after the plaintiff files the required response.<sup>9</sup> If the plaintiff is a governmental entity, the court may award the defendant actual damages<sup>10</sup> arising from the governmental entity’s violation of the anti-SLAPP law, and the court must award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of such law.<sup>11</sup>

### **Effect of Proposed Changes**

HB 437 amends s. 720.304, F.S., to provide that notwithstanding any covenant, restriction, bylaw, rule, or requirement of an HOA, a homeowner may display up to two of the following flags in a respectful manner:

- The United States flag.
- A flag that utilizes the same emblems and proportions utilized by the United States flag, regardless of the colors used on the flag. Such flag must use the fifty stars and thirteen stripes and not contain any additional emblems or text.
- The official flag of the State of Florida.
- A flag that represents the U.S. Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard.
- A POW-MIA flag.

The bill also:

- Provides that a homeowner may fly one United States flag and one flag from the list above from a freestanding flagpole.
- Amends s. 720.3075, F.S., to provide that an HOA document may not prevent a homeowner from displaying up to two flags in a respectful manner as listed above.

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<sup>4</sup> S. 720.3075(3), F.S.

<sup>5</sup> Samuel J. Morley, *Florida’s Expanded Anti-SLAPP Law: More Protection for Targeted Speakers*, 90 Fla. Bar J.16 (Nov. 2016), <https://www.floridabar.org/the-florida-bar-journal/floridas-expanded-anti-slapp-law-more-protection-for-targeted-speakers/> (last visited March 17, 2023).

<sup>6</sup> Ss. 720.304(4) and 768.295(1), F.S.

<sup>7</sup> Ss. 720.304(4) and 768.295(3), F.S.

<sup>8</sup> Ss. 720.304(4) and 768.295(4), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> The court may treble the damages awarded to a prevailing defendant who is a parcel owner in a homeowners’ association and was sued for exercising his or her right to speak on matters relating to the homeowners’ association. Generally, the damages award is limited by the sovereign immunity limitations in s. 768.28, F.S., which cap tort recovery against the state and its political subdivisions at \$200,000 per person and \$300,000 per incident. S. 720.304(4), F.S.

<sup>11</sup> Ss. 720.304(4) and 768.295(4), F.S.

The bill provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 720.304, F.S., relating to right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.
- Section 2:** Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.
- Section 3:** Provides an effective date of July 1, 2023.

**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 affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2023, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language allowing the use of a first responder flag and inserted language allowing the use of a flag that utilizes the same emblems and proportions utilized by the American flag.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.