

SUBJECT: Restricting homeowner association rules for displaying flags and flagpoles

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Deshotel, Orr, Bohac, Garza, Giddings, S. Miller, Quintanilla,
Workman

0 nays

1 absent — Solomons

WITNESSES: For — Nancy Hentschel; Michael Merola; (*Registered, but did not testify*: Janet Ahmad, Home Owners for Better Building, HOA Reform; Mike Barnett, Texas Association of Realtors; Pat Carlson, Texas Eagle Forum; Irene Adolph, Coalition for HOA Reform, HOADATA.ORG; Robin Lent, Lynn Walshak, HOA Reform Coalition); (*On CSHB 2779*) Roy Hailey, Texas Community Association Advocates; (*Registered, but did not testify*: Ashlei Leck, Texas Association of Builders)

Against — None

On — David Smith, Texas Neighborhoods Together; (*Registered, but did not testify*: Yvonne Silva)

BACKGROUND: On July 24, 2006, President George W. Bush signed HR 42, the “Freedom to Display the American Flag Act of 2005,” which prohibits condominium and homeowners’ associations (HOAs) from restricting or preventing a property owner from displaying the American flag on his or her property.

DIGEST: CSHB 2779 would prohibit an HOA from prohibiting or restricting a property owner from displaying the U.S. or Texas flag or an official or replica flag of any branch of the U.S. armed forces.

The HOA would be allowed to adopt restrictions requiring that the U.S. or Texas flag comply with federal and state laws on the proper display of flags. The homeowner also would have to keep the flag and flagpole in good condition and to repair, replace, or remove a flag or flagpole that had deteriorated or was structurally unsafe.

In addition, CSHB 2779 would allow the HOA to:

- require an attached or freestanding flagpole to be constructed of permanent, long-lasting materials and finishing that was harmonious with the homeowner's dwelling;
- require the display, location, and construction of the flag and flagpole to comply with applicable zoning ordinances;
- limit the height of the flagpole to no more than 20 feet and the number of flagpoles installed;
- regulate the location of the flagpole and the size, location, and intensity of lights used to illuminate a flag;
- govern the size of displayed flags;
- impose reasonable restrictions to abate noise caused by the halyard or the flag; and
- prohibit a property owner from locating a flagpole or displaying a flag on property owned or maintained by the HOA or owned in common by members of the HOA.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 2779 would provide balanced and clear standards on displaying flags in neighborhoods with HOAs. It would allow property owners to exhibit their patriotism and allow the HOAs to enforce reasonable regulations to protect property values. The bill would reinforce the standards of the federal Freedom to Display the American Flag Act of 2005 and would meet the needs of Texas neighborhoods. It also would require compliance with national and state laws on properly and respectfully displaying the national and state flag.

The bill would allow for an HOA review process to ensure that flags and flagpoles were not oversized or out of proportion for the neighborhood. It would allow reasonable regulations to ensure that durable materials were used and that the placement and design were compatible with the homeowner's dwelling and the surrounding neighborhood. Other provisions would help ensure that the display lighting and noise generated from the sound of the flag did not create a nuisance for neighbors. HOAs should be trusted to act fairly in protecting the property values of the entire neighborhood.

CSHB 2779 could help prevent conflicts like the one involving Mike Merola, a Marine veteran who was sued by his Cypress-area HOA for installing a 20-foot flag in the backyard of his lakefront property. Merola filed for permission to display his flag, but the HOA ruled that he could only have a six-foot flagpole mounted on his home. The HOA sued for payment of fines and attorneys' fees. The Legislature should intervene to prevent veterans who have served their country from being persecuted by HOAs for expressing their patriotism.

People's rights and liberties cannot be contracted away, especially with an HOA agreement. A person does not forfeit his or her First Amendment or other constitutional rights by moving into a neighborhood governed by an HOA.

Limiting the protections to flags for the U.S., Texas, and military services would serve to balance the rights of patriotic citizens with the HOAs' desire to maintain harmony within the neighborhood.

OPPONENTS
SAY:

If HOAs have chosen to ignore the national prohibitions in the Freedom to Display the American Flag Act of 2005, they would be just as likely not to comply with the provisions set in CSHB 2779. The bill's provisions allowing HOAs to exercise discretion on review of flagpole materials and placement and on abating nuisances caused by lights and halyards could be avenues for continued harassment of homeowners.

All homeowners, including veterans, should carefully read the covenants and restrictions of their HOAs to determine whether the community would be a good fit for them. They should be prepared to abide by the rules of the neighborhood before they move there. No one is forced to move to a neighborhood with an HOA. Individuals easily could move to a neighborhood where they would not face the same restrictions on erecting a flagpole.

OTHER
OPPONENTS
SAY:

CSHB 2779 should have included protection for other flags or banners with historical significance and controversial connotations, such as the Gadsden flag (the "Don't Tread on Me" banner) or the Confederate battle flag. An Arizona homeowner was directed to remove a Gadsden flag last year by his HOA, even though Arizona has laws similar to CSHB 2779 in protecting the display of the U.S., state, and military branch flags. As written, CSHB 2779 would allow HOAs to forbid pennants for professional or college teams, Jolly Roger pirate ensigns, rainbow banners

celebrating gay pride, or flags celebrating holidays such as Easter, Halloween, or Christmas.

NOTES:

The committee substitute differs from the original version of the bill by deleting provisions that would have defined property owner and would have prevented HOAs from requiring a flagpole to be located where the flag could not be seen. The substitute added provisions that would allow HOAs to regulate noise caused by a halyard and to prohibit erecting flagpoles on property owned or maintained by the association or held in common by all members of the association.

The companion bill, SB 1792 by Patrick, was referred to the Senate Intergovernmental Relations Committee on March 23.

In 2005, the Senate by 31-0 passed SB 54 by Nelson, a similar bill that would have prohibited HOAs from restricting flag displays, but the bill died in the House Calendars Committee.