

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 668

INTRODUCER: Senator Collins

SUBJECT: Flags

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limonos-Borja</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 668 prohibits a governmental agency, local government, or other unit of local government from publicly displaying any flag that does not follow the protocol adopted by the Governor pursuant to s. 256.015 or comply with ss. 256.032, 256.11-256.14, 256.16, and 1000.06 F.S.

The bill takes effect July 1, 2023.

II. Present Situation:

Display of Flags

Flag of the United States

The flag of the United States of America should be displayed daily on or near the main administration building of every public institution, in or near every polling place on election days, and during school days in or near every school house.¹

State law requires the flag of the United States to be displayed:

- Daily, when the weather permits, from a staff upon the state capitol and upon each county courthouse;²
- At all designated polling places on all days when an election is being held;³
- Daily, when the weather permits, at each publicly supported and controlled auditorium in a separate building;⁴

¹ 4 U.S.C. § 6.

² Section 256.01, F.S.

³ Section 256.011, F.S.

⁴ Section 256.11, F.S.

- Inside each publicly supported and controlled auditorium within a part of a building when the auditorium is open;⁵
- Daily, when the weather permits, on the grounds of each public K-20 educational institution and district school board building;⁶ and
- Within each classroom of a public K-20 educational institution.⁷

Further guidance on the protocol and display of the U.S. flag is provided by the Florida Department of State.⁸

State of Florida Flag

Section 256.015, F.S., directs the Governor to adopt a protocol on flag display. The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.⁹ The state flag must be displayed on the grounds of every public K-20 educational institution.¹⁰

POW-MIA Flag

The National League of Families POW-MIA flag is designated as the symbol of our nation's concern and commitment to resolving as fully as possible the fates of Americans still prisoner, missing, and unaccounted for in Southeast Asia.¹¹ A POW-MIA flag must be displayed at:

- Each state-owned building at which the U.S. flag is displayed, if the POW-MIA flag is available free of charge to the agency that occupies the building and if the display is in accordance with federal laws and regulations.¹²
- Each rest area along an interstate highway in the state.¹³
- Each state park where the U.S. flag is displayed.¹⁴

Honor and Remember Flag

The mission of the Honor and Remember Flag is “to perpetually recognize the sacrifice of America’s military fallen service members and their families.”¹⁵ The state designated the Honor

⁵ *Id.*

⁶ Section 1000.06(1), F.S.

⁷ Section 1000.06(2), F.S.

⁸ Florida Department of State, *Flag Protocols and Display*, available at <https://dos.myflorida.com/about-the-department/flag-and-seal-protocol/flag-protocols-and-display/#:~:text=Chapter%20256%20of%20the%20Florida,be%20exposed%20to%20public%20view> (last visited Mar. 9, 2023).

⁹ Section 256.015(1), F.S. See also Executive Office of the Governor, *Flag Protocol*, available at <https://www.flgov.com/wp-content/uploads/2022/11/2022-EOG-Flag-Protocol.pdf> (last visited Mar. 10, 2023).

¹⁰ Sections 256.032 and 1000.06(1), F.S.

¹¹ 36 U.S.C. § 902(2).

¹² Section 256.12, F.S.

¹³ Section 256.13, F.S.

¹⁴ Section 256.14, F.S.

¹⁵ Honor and Remember, *Our Mission*, available at <https://honorandremember.org/mission> (last visited Mar. 10, 2023).

and Remember Flag as its emblem of service and sacrifice of the brave men and women of the United States Armed Forces.¹⁶ The flag may be displayed in the following locations:

- Any state-owned building at which the United States flag is displayed;
- Any state-owned military memorials; and
- Any other state-owned location.¹⁷

The flag must be displayed on the following days:

- Veterans Day;
- Gold Star Mother's Day; and
- A day on which a member of the United States Armed Forces who is a resident of this state loses his or her life in the line of duty.

Firefighter Memorial Flag

The Division of State Fire Marshal of the Department of Financial Services is directed by law to design, produce, and implement the creation and distribution of an official state Firefighter Memorial Flag to honor firefighters who died in the line of duty.¹⁸ The flag may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.¹⁹

Other Government Sponsored Flags

Various counties, municipalities, universities, colleges, and K-12 schools have adopted “flags” in an attempt to garner support for the various institutions. Cities that have their own flags include Orlando,²⁰ Mount Dora,²¹ Jacksonville,²² and Tampa.²³ Florida counties that have their own flags includes Orange County²⁴ and Osceola County.²⁵ These flags are a symbol of the local history and a source of pride to help individuals feel more connected to their city and county.

¹⁶ Section 256.16, F.S.

¹⁷ Section 256.16(2), F.S.

¹⁸ Section 256.15, F.S.

¹⁹ Section 256.15(1), F.S. See also R. 69A-62.050(6), F.A.C.

²⁰ City of Orlando, *Flag*, available at <http://www.cityoforlando.net/flag/> (last visited Mar. 12, 2023).

²¹ City of Mount Dora, *City Flag*, available at <https://ci.mount-dora.fl.us/854/City-Flag> (last visited Mar. 12, 2023).

²² City of Jacksonville, *More Jax Facts*, available at <https://www.coj.net/about-jacksonville/more-jax-facts.aspx> (last visited Mar. 12, 2023).

²³ City of Tampa, *Flag*, available at <https://www.tampa.gov/city-clerk/info/archives/city-of-tampa-flag> (last visited Mar. 12, 2023).

²⁴ Orange County Government, *A Story Worth Flagging: The Origination of Orange County's Official Flag*, available at <https://newsroom.ocfl.net/2020/06/a-story-worth-flagging-the-origination-of-orange-countys-official-flag/> (last visited Mar. 13, 2023).

²⁵ Osceola County, *History of Osceola County*, available at <https://www.osceola.org/about-osceola-county/history/> (last visited Mar. 13, 2023).

Other government-sponsored flags include the warning and safety flags displayed at public beaches.²⁶ The purpose of the flags are to improve public safety. The flags provide general warnings about the overall conditions of the water.²⁷

Governmental agency, local government or other unit of local government

Chapter 256, F.S., relating to flags, does not define the terms “governmental agency,” “local government,” or “other unit of local government.”

“Governmental agency” is defined in s. 215.58(12), F.S., to mean:

- (a) The state or any department, commission, agency, or other instrumentality thereof.
- (b) Any county or municipality or any department, commission, agency, or other instrumentality thereof.
- (c) Any school board or special district, authority, or governmental entity.

While the term “local government” is not defined by statute, section 1.01(8), F.S., defines “political subdivision” to include counties, cities, towns, villages, special tax school districts, . . . , and all other districts in this state.

Freedom of Speech

The First Amendment protects freedom of speech, the press, assembly, and the right to petition the Government for redress of grievances.²⁸ A government cannot restrict speech on the basis of the message expressed;²⁹ content-based restrictions are presumptively invalid.³⁰

A flag may be deemed symbolic speech. Regulations that cover symbolic content will be upheld if they:³¹

- Are within the constitutional power of the government;
- Further an important or substantial governmental interest;
- Are based on a governmental interest that is unrelated to the suppression of free expression; or
- Are narrowly tailored so the incidental restriction on alleged First Amendment freedoms is no greater than is essential to further the state interest.

III. Effect of Proposed Changes:

Section 1 only allows a governmental agency, local government, or other units of local government to display the following flags under specific circumstances:

- The state flag at public schools.

²⁶ Section 380.276, F.S.

²⁷ Florida Department of Environmental Protection, *Beach Warning Flag Program*, available at <https://floridadep.gov/rcp/fcmp/content/beach-warning-flag-program> (last visited Mar. 13, 2023).

²⁸ U.S. CONST. Amend. I

²⁹ *Texas v. Johnson*, 491 U.S. 397 (1989); *State v. T.B.D.*, 656 So.2d 479 (Fla. 1995).

³⁰ See, e.g., *Police Dept. of Chicago v. Mosely*, 408 U.S. 92 (1972).

³¹ *United States v. O'Brien*, 391 U.S. 367, 377 (1968). See also, *Firestone v. News-Press Pub. Co.*, 538 So.2d 457, 459 (Fla. 1989).

- The United States flag at public auditoriums; near the main entrance of the main administration building of every public institution; in or near every schoolhouse on school days; and in or near every polling place on Election Day.
- The POW-MIA flag on state-owned buildings; at the rest areas along the interstate highways; and at state parks.
- The Honor and Remember Flag at state-owned buildings; state-owned memorials; and any other state-owned military locations.

Section 2 provides that the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill, by limiting the flags that may be displayed by governmental agencies, local governments, or other units of local government, to the state flag, U.S. flag, POW-MIA flag, and Honor and Remember flag, prohibits other flags and therefore may be determined to limit speech.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill does not define the term “flag.” Consideration should be given to providing a definition.

VII. Related Issues:

The bill prohibits a governmental agency from exposing to public view any flag that does not follow the Governor’s protocol on the State Flag or comply with state laws prescribing when a flag must be displayed on public buildings or grounds. It appears the bill, as drafted, may inadvertently prohibit the display of the U.S. Flag on public grounds other than at the State Capitol, the county court houses, and public schools.

The bill also appears to prohibit the display, in any instance, other government-sponsored flags not addressed in chapter 256, F.S. These other government-sponsored flags include county and city flags, beach warning flags, U.S. Armed Forces flags, etc.

VIII. Statutes Affected:

This bill creates section 256.045 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.