

BILL ANALYSIS

S.B. 54
By: Nelson
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Some homeowners' associations have disallowed homeowners from displaying the American flag by citing certain restrictive covenants. Homeowners' associations frequently utilize a provision unrelated to flag display, such as public nuisance, to declare that the restrictive covenant prohibits the homeowner's flag display.

Senate Bill No. 54 allows all homeowners, regardless of their participation in a homeowners' association, to display the American flag. This bill also prohibits the future adoption of a restrictive covenant that disallows the respectful display of an American flag, three feet by five feet or smaller, on a pole or attached to a home. However, the homeowners' association may restrict the location of the display or the size of the flagpole. Senate Bill No. 54 also prevents homeowners' associations from enforcing any current restrictive covenants, such as public nuisance, to restrict the flying of a flag, while allowing only current covenants that specifically and clearly restrict flag display to be enforced.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that this bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Chapter 202, Property Code, by adding Section 202.008, as follows:

Sec. 202.008. REGULATION OF DISPLAY OF FLAG. (a) Prohibits a property owners' association from enforcing a restrictive covenant that prohibits or restricts the display of the United States flag by a property owner on the owner's property unless the prohibition or restriction is clearly and specifically stated in the covenant.

(b) Prohibits a restrictive covenant, rule, or other prohibition from being adopted if the prohibition or restriction prevents a property owner from displaying the United States flag in a size not larger than three feet by five feet in a respectful manner on the owner's property.

(c) Provides that this section does not prohibit the adoption of a restrictive covenant or rule allowing the display of the United States flag larger than three feet by five feet or restricting the location of the display of the United States flag on an owner's property or the size of a flagpole that may be used for the display.

(d) Provides that the United States flag is displayed in a respectful manner if the flag is displayed in the manner provided by 4 U.S.C. Sections 6-8.

SECTION 2. Provides that this Act applies regardless of the date the restrictive covenant, rule, or prohibition was adopted.

SECTION 3. Effective date: upon passage or September 1, 2005.

EFFECTIVE DATE

September 1, 2005.