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## Judiciary Committee

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### SSB 6064

**Title:** An act relating to homeowners' associations.

**Brief Description:** Limiting the powers of homeowners' associations.

**Sponsors:** Senators Benton and Fairley.

Brief Summary of Substitute Bill
<ul style="list-style-type: none"><li>Prohibits homeowner associations from banning political yard signs before an election, but allows the association to have reasonable rules on the placement and manner of such signs.</li></ul>



**Hearing Date:**

**Staff:** Trudes Tango Hutcheson (786-7384).

**Background:**

A homeowners' association is an organization consisting of the homeowners and property owners within a residential development. Homeowners' associations may impose and collect assessments on property owners, manage and maintain common areas, and enforce restrictive covenants that govern the community.

Restrictive covenants can be as specific as regulating the architectural designs of homes, the size of mailboxes, and the placement of satellite dishes. The homeowners' associations may impose fines for violations of its covenants.

The First and Fourteenth Amendments of the federal Constitution protect a person's freedom of speech by limiting the laws government may enact that abridge speech. With certain exceptions, the First Amendment does not apply to private parties. However, at least one district court in Florida found that judicial enforcement of private agreements within a restrictive covenant constituted state action, thereby making the parties' private conduct subject to the First Amendment. In that case, a private condominium rule restricted residents from flying the American flag except under certain circumstances. The Florida court relied on a U.S. Supreme Court case, *Shelley v. Kraemer*, 334 U.S. 1 (1948), in which the Court held that a state court's enforcement of a racially restrictive covenant constituted sufficient state action to make the covenant subject to constitutional protections.

In 2004, the Legislature enacted a law prohibiting homeowners' associations from banning its residents from displaying the American flag and from installing flagpoles on their property. The law allows for reasonable restrictions on the placement and manner of display.

Both the state and federal Constitutions provide that no state shall pass a law impairing the obligation of contracts. A contract is impaired if the statute alters its terms, imposes new conditions, or lessens its value. Even if a substantial impairment of contract occurs, it may not be unconstitutional if it was reasonable and necessary to achieve a legitimate public purpose.

Generally statutes are prospective unless it is clear the law is to be retroactive. A retroactive statute is unconstitutional under the due process or contract clauses only if the statute is unfair or unreasonable.

**Summary of Substitute Bill:**

A homeowners association's governing documents may not prohibit the outdoor display of political yard signs by an owner or resident before any primary or general election. The association may have reasonable regulations on the placement and manner of display. This provision applies retroactively to homeowners' associations' governing documents that are in effect at the effective date of the bill.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.