

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1607 Protection of Historical Monuments and Memorials

SPONSOR(S): Constitutional Rights, Rule of Law & Government Operations Subcommittee, Black and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1096

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Constitutional Rights, Rule of Law & Government Operations Subcommittee	9 Y, 3 N, As CS	Wagoner	Miller
2) Judiciary Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Memorials are defined in statute. The willful and malicious destruction or demolition of a memorial, unless authorized by the owner, is punishable as a second degree felony.

Creating the "Historical Monuments and Memorials Protection Act," the bill provides that a person or entity may not take or remove a monument or memorial displayed on public property without authorization from the owner. Any person or entity removing a monument or memorial without owner authorization is liable for treble the amount of the full cost of returning the monument or memorial and may be subject to punitive damages.

The bill establishes that a public entity owning a monument or memorial, a legal resident of the state, or an entity whose purpose is historical preservation has standing to bring a civil action in circuit court in the judicial circuit where the monument or memorial is located.

The bill allows a monument or memorial to be moved or relocated for various transportation projects and must be relocated to a sight of similar prominence, honor, visibility, and access within the same county or municipality in which the monument or memorial was originally located.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Memorials and Monuments

Historic properties, memorials, and monuments throughout Florida recognize historical events or significant accomplishments of residents, including a number of memorials located on the grounds of the Capitol Complex.¹ “Historic property” is defined as any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program.² “Monument” is defined to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history.³

The Florida Arts and Culture Act⁴ was established to provide support for, and gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums, and nonprofit organizations. The intent of the Act is to foster and ensure that arts and culture have a significant and positive effect on Florida residents.⁵

The Division of Historical Resources in the Department of State is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida’s historic sites and properties or objects related to Florida’s history and culture.⁶ This includes cooperating with, advising, and assisting federal and state agencies in pursuit of historic preservation.⁷

The Florida Historical Resources Act⁸ was established to preserve archaeological sites and objects of antiquity for the public benefit.⁹ The Act recognizes Florida’s rich and unique heritage of historic properties as an important legacy to be valued and conserved for present and future generations. Accordingly, Florida has adopted a state policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state’s historic environment and resources.¹⁰

In 2021, Florida prohibited the willful and malicious destruction, demolition, or pulling down of memorials and historic property. The statute defines “memorial” as any plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display when such item is:

- Constructed and located with the intent that it be permanently displayed or perpetually maintained;
- Dedicated to an historical person, entity, event, or a series of events; and

¹ S. 281.01, F.S., defines capitol complex to mean portions of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term also includes the State Capital Circle Office Complex located in Leon County, Florida. See ss. 265.001-265.006, F.S.

² S. 806.13(1)(a), F.S.

³ S. 265.111, F.S.

⁴ Ss. 265.281-265.709, F.S.

⁵ S. 265.282, F.S.

⁶ S. 20.1(2)(b), F.S.

⁷ S. 267.031, F.S.

⁸ Ss. 267.011-267.1736, F.S., are cited as the Florida Historical Resources Act. S. 267.011, F.S.

⁹ S. 267.14, F.S.

¹⁰ S. 267.061(2)(a), F.S.

- Intended to honor or recount any past or present military service of any U.S. Armed Forces military personnel or the public service of any Florida or U.S. resident.¹¹

It is a second-degree felony¹² for any person to willfully and maliciously destroy or demolish any memorial or historic property, or willfully and maliciously pull down a memorial or historic property, unless authorized by the owner of the memorial or the historic property. A person convicted of willfully or maliciously destroying or demolishing any memorial or historic property must be ordered to pay restitution, including the full cost of repair or replacement of the memorial or historic property destroyed.¹³

Civil Liability, Treble Damages, and Standing to Bring a Claim

A statute may subject a person to civil liability for damages caused by the person's criminal behavior. "Civil liability" is the quality, state, or condition of being legally obligated or accountable for civil damages.¹⁴ "Treble damages" are damages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed.¹⁵

Standing

A party bringing a claim for damages must be the real party in interest or be expressly authorized by statute to bring the claim on behalf of the real party in interest.¹⁶

Effect of Proposed Changes

Creating the "Historical Monuments and Memorials Protection Act," the bill provides that any person or entity that removes a monument or memorial, displayed on public property, without authorization from the owner is liable for treble the amount of the full cost of return and may be subject to punitive damages. "Memorial" is defined as a plaque, statute, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display constructed and located with the intent of being permanently displayed. A public entity owning a monument or memorial, a legal resident of the state, or an entity whose purpose is historical preservation is authorized to bring a civil action in the circuit court for the judicial circuit in which the monument or memorial is located to enforce this prohibition.

The bill requires that a governmental entity may move or relocate a monument or memorial only for construction, expansion, or alteration of publicly owned buildings, roads, streets, highways, or other transportation projects. A monument or memorial relocated for these purposes must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality in which the monument or memorial was originally located.

B. SECTION DICTIONARY:

Section 1 creates the title "Historical Monuments and Memorials Protection Act."

Section 2 creates S. 267.201, F.S. relating to protecting historical monuments and memorials.

Section 3 provides for an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹¹ S. 806.135(1)(b), F.S.

¹² A Second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082(9)(a)3.c. and 775.083(1)(b), F.S.

¹³ S. 806.135(3), F.S.

¹⁴ *Civil Liability*, Black's Law Dictionary (11th ed. 2019).

¹⁵ *Treble Damages*, Blacks' Law Dictionary (11th ed. 2019).

¹⁶ Fla. R. Civ. P. 1.210(a) states in pertinent part: "Every action may be prosecuted in the name of the real party in interest, but . . . a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought."

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 require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor provides authority for executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023 the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment created the new provision as s. 267.201, F.S., clarified that no objects may be placed on certain memorials without the written consent of the Secretary of State, and specified parties with standing to sue to enforce the statute. The amendment also provided that governmental agencies may only relocate a monument or memorial when the relocation is necessary for construction, expansion, or alteration of certain public infrastructure, and then only to a site of similar prominence, honor, visibility, and access within the same county or municipality.

This analysis is drawn to the bill as amended by the Constitutional Rights, Rule of Law & Government Operations Subcommittee.