

STORAGE NAME: h0591s1a.sa.doc
DATE: April 3, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: CS/HB 591
RELATING TO: Historical Monuments & Memorials
SPONSOR(S): Committee on Tourism, Representative(s) Kilmer and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) TOURISM YEAS 5 NAYS 0
- (2) STATE ADMINISTRATION YEAS 4 NAYS 1
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

I. SUMMARY:

The bill, the "Florida Historical Monuments and Memorial Act", prohibits the relocation, removal, alteration, or disturbance of any permanently displayed monument, memorial, plaque, marker, or historic flag commemorating or memorializing certain wars and military engagements except under certain specified circumstances. The removal of such items is permitted for the express purpose of needed renovations, alterations, corrections, or due to necessary roadway expansions or other necessary construction. The removed item is to be replaced in its original location, if feasible. If not, it is to be placed in another appropriate location on public property for public display and access. The prohibition applies only if the monument, memorial, plaque, marker, or historic flag is displayed on public property of the state or any of its political subdivisions. The bill also prohibits any person or organization from preventing a public or private body from fulfilling its responsibility for the protection, preservation, or care of those items protected by the act. Any person preventing the fulfilling of such responsibility commits a second degree misdemeanor, punishable according to criminal statutes.

Finally, the bill prohibits the renaming or rededication of any street, park, bridge, building, school, preserve, reserve, or other public area of the state or any of its political subdivisions dedicated in memory of or named for any historic figure or event unless approved by at least two-thirds vote of the governmental body responsible for the naming or by a vote in excess of two-thirds of the governmental body when required by local ordinance governing the action of such governmental body.

The bill takes effect upon becoming a law.

According to fiscal comments received from the Department of State, there would be no fiscal impact on the activities of the department by this legislation.

See "Other Comments" section of this bill analysis for comments by the Committee on State Administration. The committee substitute does raise one constitutional concern.

The sponsor, at the Committee on State Administration meeting, indicated her intention to offer amendments to address the unclear language and constitutional concern.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Department of State – Historic Preservation Duties & Responsibilities

The primary chapter of law in which all aspects of the state's responsibilities in historic preservation are contained is Chapter 267, F.S. Specifically, these are directed to the Division of Historical Resources of the Department of State (department) to carry out on behalf of the state.

Not only are Florida's historic preservation initiatives governed by state law but also by the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470. The federal law sets forth the requirements for state historic preservation programs, both structure and responsibilities. It also provides for both direct grants and for matching grants to the states with funds appropriated annually by Congress. A state historic preservation program must be approved by the Secretary of the Interior. One requirement of the program is the designation of a State Historic Preservation Officer by the Governor to administer the programs for the state. Another is the requirement for a state historic preservation review board and for citizen input into the state's historic preservation efforts (Florida's *National Register Review Board* and the state's *Historic Preservation Advisory Council*). Additionally, the responsibilities of the State Historic Preservation Officer are delineated in the federal law as well as the requirement for a comprehensive statewide historic preservation plan. The requirements of the federal law and the means to address those requirements are found throughout Chapter 267, F.S.

Chapter 267, F.S., sets forth the state policy for historic preservation, addresses the requirements of the federal law, and charges the Division of Historical Resources (division) with encouraging the identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage. The division is required to administer public information programs, the statewide historic preservation plan, the operation of historic sites and properties, and state and federal grants for historic preservation. Additionally, the law requires the maintenance and operation of Florida's state historic museums, the administration of museum grants, promotion of various archaeological research and preservation programs, including a historic marker program.

There are several statutorily required advisory councils appointed by the Secretary of State: *Historic Preservation Advisory Council*, *State Historical Marker Council*, *Florida Folklife Council*, and *Grove*

Advisory Council. Although not statutorily required, the Secretary appoints an *Ad Hoc Historic Museum Grants Advisory Committee* to assist in the statutory museum grants responsibilities.

General Responsibilities for Working With Other Governmental Entities, Organizations & Persons

The Division of Historical Resources (division) is required to among other things do the following:

- Cooperate with federal and state agencies, local governments, and organizations and individuals to ensure that historic resources (*by definition, this includes memorials and monuments*) are taken into consideration at all levels of planning and development.
- Advise and assist, as appropriate, federal and state agencies and local governments in carrying out their historic preservation responsibilities and programs.
- Take such other actions necessary or appropriate to locate, acquire, protect, preserve, operate, interpret, and promote the location, acquisition, protection, preservation, operation, and interpretation of historic resources to foster an appreciation of Florida history and culture.
- Coordinate and cooperate with the Division of Recreation and Parks of the Department of Environmental Protection in the operation and management of historic properties or resources subject to the Division of Historical Resources.
- Coordinate and direct the state historical marker program, which is a program of popular history and heritage designed to inform the general public about persons, events, structures, and other topics relating to the history and culture of the state; encourage interest in preserving the historical resources of the state and its localities; promote a sense of community and place among Florida citizens and provide for the enjoyment and edification of tourists.

Historical Marker Program

As mentioned above, the division is required to coordinate and direct the state historical marker program. The division is required to install markers recognizing historic properties, as well as individuals, events, and other topics significant in Florida or American History, architecture, archaeology, or culture and must keep a register of those markers.

Additionally, s. 267.061(3)(n), F.S., requires that there be a uniform, Official Florida Historical Marker. Categories of markers include Florida Heritage Landmark markers, State Historic Highway markers, Florida Heritage markers, and other special series of markers.

The marker program is based upon a statutorily required comprehensive plan which includes among other things: criteria for use of markers; selection of subjects to be marked; maintenance of markers; and removal or replacement of markers.

The division is authorized and empowered to erect and maintain appropriate signs or markers indicating sites of historic interest and value on public property as well as on private property, when permission is given. The Department of Transportation or the governing body of each county or municipality is authorized to permit and assist the division in erecting and maintaining such historic signs or markers with the right-of-way of any state highway, county road, or municipal street, or any other property under its jurisdiction and control, under conditions and limitations as may be determined appropriate. The division has the exclusive authority and power to erect and maintain the historic signs or markers within the right-of-way of any state highway.

Naming of State Buildings

Section 267.062(2), F.S., requires the division, after consulting with appropriate citizens' committees, to recommend names of persons whose contributions to the state have been of such significance that the division may recommend that state buildings and facilities be named for them.

Flags

Section 256.031, F.S., states that the Department of State is the official custodian of the official state flag. The department is to provide information not only on Florida's current flag but also on all flags that have flown over any part of the state by those sovereigns to which Florida has belonged.

Flags – Chapter 256, F.S.

Chapter 256, F.S., provides direction on the flying of flags and prohibition against improper use or mutilation of the United States flag, State of Florida flag, Confederate flag, and the POW-MIA flag.

Improper use, public mutilation, defacing, defiling, defying or trampling upon the United States flag and the State of Florida flag are punishable as a misdemeanor of the second degree punishable under s. 775.082 or s. 775.083, F.S.

Naming of Schools and Other District Facilities

Under s. 230.23005(4), F.S., school boards may adopt policies providing for management of the physical campus and its environs which are to include the dedication and rededication or naming and renaming of district buildings and other district facilities.

Naming of Roads and Bridges

The designation of state roads and federal highways in the boundaries of the state is governed by s. 334.071, F.S. The effect of such designations shall only be construed to require the placement of markers by the Department of Transportation at the termini or intersections specified for each highway segment or bridge designated, and as authority for the department to place other markers as appropriate for the transportation facility (road, bridge, etc.) being designated. Pursuant to s. 336.05, F.S., in counties, the commissioners are authorized to name and rename streets and roads, except state roads designated by number by the Florida Department of Transportation, lying outside the boundaries of any incorporated municipality. Designation of roads within a municipality is governed by the municipality.

Local Government Authority

Chapter 125, F.S., is the primary chapter in law governing the establishment of county governments and their powers and duties. The powers and duties outlined are broad in scope and are guidelines to lead the governing body in its carrying on of county government. Chapter 166, F.S., is the governing chapter for municipalities. Article VIII of the State Constitution establishes both county and municipal forms of government. Section 166.021, F.S., begins by stating that "as provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and

proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except expressly prohibited by law.” Both chapters of law refer to constitutional home rule powers in their respective forms of local government.

C. EFFECT OF PROPOSED CHANGES:

This bill, the “Florida Historical Monuments and Memorial Act”, prohibits the relocation, removal, alteration, or disturbance of any permanently displayed monument, memorial, plaque, marker, or historic flag commemorating or memorializing certain wars and military engagements except under certain specified circumstances. The removal of such items is permitted for the express purpose of needed renovations, alterations, corrections, or due to necessary roadway expansions or other necessary construction. The removed item is to be replaced in its original location, if feasible. If not, it is to be placed in another appropriate location on public property for public display and access. The prohibition applies only if the monument, memorial, plaque, marker, or historic flag is displayed on public property of the state or any of its political subdivisions.

This bill also prohibits any person or organization from preventing a public or private body from fulfilling its responsibility for the protection, preservation, or care of those items protected by the act. Any person preventing the fulfilling of such responsibility commits a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.¹

Finally, the bill prohibits the renaming or rededication of any street, park, bridge, building, school, preserve, reserve, or other public area of the state or any of its political subdivisions dedicated in memory of or named for any historic figure or event unless approved by at least two-thirds vote of the governmental body responsible for the naming or by a vote in excess of a two-thirds vote when required by local ordinance governing the action of such governmental body.

The bill takes effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

See “Effect of Proposed Changes.”

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The only information received was from the Department of State which indicated that there would be no cost.

¹ For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days, s. 775.082(4)(b), F.S., and \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation, s. 775.083(1)(e), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Unable to determine at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to fiscal comments received from the Department of State, there would be no fiscal impact on the activities of the department by this legislation.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

See "Other Comments."

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Committee on State Administration

The second subsection of the committee substitute provides that the enumerated monuments, memorials, plaques, markers, or historic flag may not be relocated, removed, disturbed, or altered, except *for removal* for the express purpose of certain conditions, which does not include lowering the flag to half-mast. It is unclear whether the phrase "for removal" is intended to narrow the

circumstances under which the governmental entity can disturb its own flag. The term “disturb” also seems to be unclear as to what behavior is prohibited.

This committee substitute provides that it is a second degree misdemeanor to prevent a public entity from repairing a flag, but it is unclear whether this punishment also would be interpreted to go to the first subsection, where the relocation, removal, disturbance, or alteration of the flag is prohibited.

In criminalizing the prevention of a public entity from caring for its monuments, subsection 3 of the committee substitute does not take into consideration an order by a court of competent jurisdiction to the contrary. For example, if there were ownership issues, regarding property that had been designated a monument, memorial, plaque, marker, or historic flag, that were being resolved in the court system, a court could rule to order the public entity not to touch the property at issue.

Subsection 4 provides that no street, park, bridge, building, school, preserve, reserve, or other public area of the state that has been dedicated in memory of or named for any historic figure can be renamed or rededicated unless approved by a two-thirds vote.

Section 7 of Article III, of the State Constitution provides that “[p]assage of a bill shall require a majority vote in each house.” Therefore, unless the Constitution requires an extraordinary vote, passage of a bill requires only a majority vote. Accordingly, the language of this bill requiring a two-thirds vote could raise constitutional concerns.

Subsection 4 also provides for a “vote in excess of two-thirds of the governmental body when required by local ordinance governing the action of such governmental body.” If a certain vote is required by a local ordinance, that local government already must comply with that ordinance. Accordingly, it is unclear why this language would be necessary.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 2001, the Committee on Tourism unanimously passed a committee substitute for House Bill 591. The committee substitute differs from the original bill in the following ways:

- Provides that the prohibition pertaining to relocation, removal, alteration, or disturbance applies only to permanently displayed monuments, memorials, plaques, markers, or historic flags.
- Provides exceptions to prohibition for relocation, removal, alteration, or disturbance when such is for the express purpose of needed renovations, alterations, corrections, or due to necessary roadway expansions or other necessary construction. Requires replacement in original location unless determined not feasible. When not feasible, the item is to be placed in another appropriate location on public property for public display and access.
- Provides an exception to the renaming and rededication provision of the bill. Such renaming or rededication can occur when there is at least a two-thirds vote of the governing body with responsibility for naming or dedicating a street, park, bridge, building, school, preserve, reserve, or other public area to do the renaming or rededication. If a vote in excess of two-thirds is required by a local ordinance that governs the actions of the particular governing body, then that vote requirement shall take precedence.

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VII. SIGNATURES:

COMMITTEE ON TOURISM:

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AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

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