

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1305 (FORMERLY PCB TURS 05-01) Department of State  
**SPONSOR(S):** Tourism Committee  
**TIED BILLS:** HB 1307 **IDEN./SIM. BILLS:** SB 2152

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Tourism Committee	8 Y, 0 N	McDonald	McDonald
1) Transportation & Economic Development Appropriations Committee			
2) State Infrastructure Council			
3)			
4)			
5)			

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### SUMMARY ANALYSIS

The bill, which takes effect July 1, 2005, addresses various statutory responsibilities of the Divisions of Cultural Affairs, Historical Resources, Library and Information Services, and Corporations within the Department of State. Changes proposed delete obsolete language; conform language to federal requirements; clarify responsibilities of the divisions and advisory commissions and councils; provide additional safeguards of state funds for the Cultural Endowment, Cultural Facilities, and Regional Cultural Facilities Programs; and provide private assistance to cultural and arts programs and library and information services programs through the establishment of citizen support organizations as is currently statutorily provided to historical resources programs.

In the area of cultural affairs, the bill designates the Division of Cultural Affairs as the state arts administrative agency; requires a post-audit for cultural endowment recipients; requires a recordation of a restrictive covenant for cultural facility and regional cultural facility grantees, as well as a requirement for bonds and for repayment of grant awards under certain circumstances; creates a citizen support organization to assist the division with its cultural and arts programs; deletes obsolete language; and, repeals language relating to the authority of the department to enter into indemnity agreements.

In the area of historical resources, the bill permits Florida Historical Commission members to stay in office until a replacement is appointed, permits Commission presiding officer to appoint designee to chair certain grant panels, amends location and citizen advisory requirements for regional offices, provides for the establishment of endowments, requires rules for prohibited practices and penalties, and removes obsolete language.

In the area of library and information services, the bill designates the Division of Library and Information Services as the state library administrative agency for federal purposes; changes the size, composition, and selection process of the State Library Council; modifies the responsibilities of the State Librarian; provides definitions for the chapter governing the Division of Library and Information Services; and creates a citizen support organization to assist the division with its library, archives, and records management programs. The bill also revises language relating to library grants to reflect correct terminology.

Finally, in the area of corporations, the bill deletes an obsolete provision of law requiring the Division of Corporations to be accountable for certain performance standards for Uniform Commercial Code documents.

The bill appears to have an insignificant fiscal impact on state expenditures and no impact on state revenues. See "Fiscal Analysis & Economic Impact Statement" for details on state, local, and private sector impacts.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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**DATE:** 3/2/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases the size of the State Library Council by two members. The bill also creates citizen support organizations to assist cultural and arts programs and library, archive and records management programs and services of the Department of State. The bill authorizes the Department of State to prescribe, by rule, conditions for the use of certain services, property, or facilities by the citizen support organizations. The bill also requires the adoption of rules related to prohibited practices for archaeological sites and objects of historical or archaeological value and to penalties associated with those prohibited practices. The bill repeals the Florida Arts and Artifacts Indemnity Program and the required annual legislative report. Details are provided in the discussion below.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The Department of State (DOS), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration. Of those, Corporations, Cultural Affairs, Historical Resources, and Library and Information Services are addressed in the bill. The statutory responsibilities of those divisions are briefly discussed below.

Division of Corporations is a ministerial filing agency that serves as the statewide central repository for business entity filings and uniform business reports & annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks.

Currently, there is an obsolete provision in law that requires the division to file all Uniform Commercial Code documents within 3 working days after the time they are received by the Bureau of Uniform Commercial Code.<sup>1</sup> The Bureau of Uniform Commercial Code no longer exists within the division. In fact, the entity became nonexistent approximately 15 years ago. This is now a privatized filing for the financial industry that is no longer administered by the division.

Division of Cultural Affairs awards, administers, monitors, and evaluates Florida's cultural grant programs, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida.

The division is assisted in carrying out its duties by advisory groups. The Florida Arts Council, a 15-member advisory board, advises the Secretary of State on the distribution of grant awards. The Secretary appoints "Grant Review Panels," composed of artists, arts-related professionals and community cultural leaders, to evaluate requests for funds and make recommendations to the Florida Arts Councils. The grants can be divided into fixed capital grants, often referred to as the "list", and program grants.

The fixed capital programs consist of the cultural facilities grant under s. 265.701, F.S., and the regional cultural facilities grant under s. 265.702, F.S. These fixed capital programs require a \$2 local match for each \$1 state match. Criteria for eligibility and administration of the programs are provided in statute or in rule. Currently, there is no requirement for the funded facility to continue to be used as a cultural

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<sup>1</sup> See s. 15.0913, F.S.

facility for any specified period of time. Another “list” program that is not fixed capital is the Cultural Endowment Program, under ss. 265.601-265.606, F.S., which requires each individual endowment to total \$600,000 with a sponsoring organization providing \$360,000 and the state providing a match of \$240,000. The interest from the endowment is to be used for operation costs. Requirements for the Cultural Endowment Program are specified in both statute and rule, including the preservation of the \$600,000 capital value of the endowment and the reversion of state funds. Unlike many other cultural programs, however, there is no statutory requirement for an annual post-audit of financial accounts to be conducted by an independent certified public accountant.

Finally, under the Florida Arts and Artifacts Indemnity Program created in 1981, the Department of State is statutorily required to make agreements to indemnify against loss or damage such items as may be eligible in accordance with ss. 265.11 – 265.56, F.S., and according to the terms and conditions as prescribed by the department in rule.<sup>2</sup> An indemnity agreement covers the eligible items from the time they leave the premises of the lender or place previously designated by the lender until the items are returned to the premises of the lender or place previously designated in writing by the lender. Aggregate claims under the program cannot exceed \$3 million. Authorized claim payments are to be executed by the Chief Financial Officer from the Working Capital Fund. The Department of State is required to provide the Legislature with an annual report on contracts and claims. According to the department, only one organization received a contract under the law and no claims have ever been paid.<sup>3</sup> Also, according to the department, in order for museums to be accredited, they must maintain insurance to cover damage to or losses of loaned items. Since the provisions have not been used in over 20 years and the indemnity requirements for accredited museums negate the necessity for continuing the indemnification, the Department of State is requesting that the language be repealed.

Division of Historical Resources is charged with encouraging 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 responsibilities related to historic preservation are not only governed by state law but also by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).<sup>4</sup> The division administers public information programs, the statewide historic preservation plan, the operation of historic sites and properties, and state and federal grants for historic preservation. Its duties also include the maintenance and operation of Florida’s state historic museums, promotion and administration of the Florida Folklife Program, and administration of various archaeological research and preservation programs, including a historic marker program. To assist in carrying out the federal and state prescribed responsibilities of the division, s. 267.031(5), F.S., establishes historic preservation regional offices in St. Augustine, Tampa, and West Palm Beach and allows for the creation of additional offices in other areas as deemed necessary by the division. The division is required to establish a citizen support organization for each historic preservation regional office.

In the 2005 Legislative Session, the Department of State and the division were given additional responsibilities through the creation of the Discovery of Florida Quincentennial Commemoration Commission which was placed within the department.<sup>5</sup> The purpose of the Commission is to plan and lead the commemoration of Juan Ponce de Leon’s discovery of Florida. This is to be done through the development and implementation of a statewide master plan. The law provides for appointment of Commission membership and authorizes specific powers and duties relative to the development and implementation of the master plan. Special subcommittees are permitted and an advisory committee is

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<sup>2</sup> Section 265.52, F.S., lists eligible items as works of art; manuscripts, rare documents, books, and other printed or published materials; other artifacts or objects; and photographs, motion pictures, or audio and video tape.

<sup>3</sup> In 1981, the Center for the Fine Arts, which was not a collecting museum but only contracted to bring in art shows, had an indemnity agreement for a major art show called “In Quest of Excellence.” Since that time, the Center for the Fine Arts reincorporated and is now the Miami Art Museum which is an accredited collecting museum.

<sup>4</sup> The federal law requires the state to have a State Historic Preservation Officer and a comprehensive statewide historic preservation plan that is approved by the Secretary of the Interior.

<sup>5</sup> See Chapter 2004-91, L.O.F.

required to assist the Commission in its responsibilities. The Commission must hold its initial meeting no later than January 2006 to organize and begin its work. By January 2007 an initial draft of the master plan must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives. The master plan must be completed by January 2008. Department and division responsibilities outlined, include, but are not limited to, establishment of a citizens support organization to assist in the development and implementation of the master plan and provision of administrative support and consulting services. The responsibilities of the department were contingent upon appropriation. No funding was provided for responsibilities to organize the initial meeting of the Commission, to pay per diem and travel for members, nor to pay for any other administrative costs associated with the Commission.

The division receives assistance through citizen involvement in various statutorily required advisory councils appointed by the Governor and President of the Senate and Speaker of the House of Representatives as well as those appointed by the Secretary of State: Florida Historical Commission, State Historical Marker Council, Florida Folklife Council, and Grove Advisory Council. The Florida Historical Commission, an 11-member commission, provides assistance, advice and recommendations to the division in establishing priorities for the identification of assessing significance of historic and archaeological sites and properties, evaluating proposals for state historic markers, and evaluating proposals for awards of grants-in-aid. Unlike the Florida Arts Council, the law creating the Florida Historical Commission does not provide for a member whose term has expired to continue to serve until a replacement has been appointed. According to the Department of State, this has caused difficulty in the ability of the Commission to have a quorum necessary to perform its statutory duties.

Currently, the division is the only one in the Department of State to also receive assistance through citizen support organizations. The following citizen support organizations assist the division in many ways including the garnering of resources: *Florida Trust for Historic Preservation, Inc.*, *Friends of Historic Properties and Museums, Inc.*, and *Friends of Mission San Luis, Inc.* The establishment of these citizen support organizations has been authorized by law since 1986.<sup>6</sup>

*Division of Library and Information Services* provides library, records management, and archival services at the state and local level. The division provides direct library services to state government, management services, technical assistance, education, financial aid, and cooperative services. Working in partnership with archivists, librarians, records managers, government officials, and citizens, the division seeks to ensure access to materials and information of past, present and future value to enable state government and local libraries and agencies to provide effective information services for the benefit of Floridians.

The division is assisted in fulfilling its federal requirements or in addressing specific concerns by the Library Services and Technology Act Advisory Council, Florida Library Literacy Advisory Council, and Florida Library Network Council.

Additionally, there is a statutorily created State Library Council, a seven-member council appointed by the Secretary of State, to advise and assist the division on its programs and activities and to act as a bridge between the division and those involved with making policy and program decisions for local libraries. At least one member of the Council must be a person who is 60 years of age or older and at least one member must be a person who is not, and never has been, employed in a library or in teaching library science courses. In addition to, and at the request of, the members of the Council appointed by the Secretary of State, the president-elect of the Florida Library Association may serve as a member of the Council in a nonvoting capacity during his or her term as president-elect. The director of the division serves without voting rights as the secretary of the Council.

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<sup>6</sup> See s. 267.17, F.S.

## Proposed Changes

In the area of cultural affairs, the bill designates the Division of Cultural Affairs as the state arts administrative agency and gives the division the statutory authority to frame state works of art.

In the grant programs administered by the Division of Cultural Affairs, the bill adds safeguards for state funds expended on the Cultural Endowment, Cultural Facilities, and Regional Cultural Facilities Programs. A recipient of the Cultural Endowment Program funding is required to submit to the division an annual post-audit of its financial reports that is conducted by an independent certified public accountant. Any contract for grants administered by the division for either the Cultural Facilities Program or Regional Cultural Facilities Program requires the recordation of a restrictive covenant by the grantee and property owner or the purchase of a bond to ensure that the facility continues to be used as required for a period of 10 years following the grant award. If the facility ceases to be used as a cultural facility or regional cultural facility during that period, the grant funds are required to be repaid to the Department of State according to an amortization schedule contained in departmental rules.

The bill creates a citizen support organization to assist the Division of Cultural Affairs with its cultural and arts programs. Finally, the bill deletes reference to the nonexistent State Dance Program, State Orchestra Program, and the State Opera Program which have never been funded by the Legislature; deletes obsolete language; and, repeals language relating to the authority of the Department of State to enter into indemnity agreements.

In the area of historical resources, the bill revises the Florida Historical Commission to permit members to stay in office until a replacement is appointed thereby allowing the Commission to maintain a quorum and conduct business as required by statute. This provision is consistent with statutory requirements for member replacement on the Florida Arts Council and other councils within the Department of State. The bill also gives the presiding officer of the Commission the ability to appoint a designee to chair one of the special category historic preservation grants-in-aid review panels or historical museum grant review panels when no Commission member is available to serve as chair. This change provides flexibility to ensure that panels can meet in a timely manner to carry out the statutory responsibilities of the Commission, the panels, and the Division of Historical Resource. The ability to appoint a designee is also consistent with the requirements for the Florida Arts Council.

The bill gives specific authorization to the Division of Historical Resources to establish an endowment that is consistent with its responsibilities under the Historic Preservation Act. Current law allows the division to accept gifts, bequests, loans, grants, and endowments; however, it does not specifically authorize the establishment of an endowment.

With regard to historic preservation regional offices, the bill does three things: 1) removes the statutory requirement for regional offices to be in specific locations; 2) requires that at least three regional offices be established; and, 3) requires that each regional office have a citizen advisory board in lieu of a citizen support organization.

The bill requires the Division of Historical Resources to adopt rules related to prohibited practices regarding archaeological sites and objects of historical or archaeological value and to penalties associated with those prohibited practices.

The bill also moves forward by one year the requirements for the first meeting of the Discovery of Florida Quincentennial Commemoration Commission, the initial draft of the master plan, and the submission of the master plan to the Legislature.<sup>7</sup>

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<sup>7</sup> Section 267.174, F.S., requires that the initial meeting of the Commission be no later than January 31, 2006, the initial draft of the master plan be submitted to the Legislature by January 2007, and the master plan be submitted by January 2008. The quincentennial celebration will not be until 2013.

Finally, the bill removes obsolete language regarding the Folklife and Great Floridians programs.

In the area of library and information services, the bill provides definitions for the chapter governing the Division of Library and Information Services, designates the Division of Library and Information Services as the state library administrative agency for federal purposes, modifies the duties of the State Librarian to specify management of the operations of the programs assigned by law to the division, and makes a technical change relating to program grants.

The bill also makes several changes to the State Library Council including increasing the number of members from seven to nine, requiring representation of library, archive, and records management professional associations, and deleting a specific requirement that one member must be 60 years of age or older. The member selection process to be used by the Secretary of State is expanded to encompass consultation with a wider variety of persons and associations with expertise in the area of library and information services.

Additionally, the bill creates a citizen support organization to assist the Division of Library and Information Services with its library, archives, and records management programs. The bill also deletes obsolete language relating to library grants.

Finally, in the area of corporations, s. 15.0913, F.S., an obsolete provision of law relating to requiring the Division of Corporations to be accountable for certain performance standards for Uniform Commercial Code documents is deleted.

The bill takes effect July 1, 2005.

#### C. SECTION DIRECTORY:

Section 1 creates s. 257.015, F.S., adding definitions for ch. 257, F.S.

Section 2 amends s. 257.02, F.S., relating to the State Library Council; changing number and composition of Council; specifying groups for membership consultation; providing for officers.

Section 3 amends s. 257.031, F.S., relating to organization of State Library Council, appointment and duties of State Librarian; deleting provisions relating to State Library Council; providing duties of State Librarian.

Section 4 amends s. 257.12, F.S., relating to authorization of the Division of Library and Information Services to receive federal funds; designating the division as the state library administrative agency.

Section 5 amends s. 257.192, F.S., relating to program grants; making a technical change in library program grant language.

Section 6 creates s. 257.43, F.S., establishing a citizen support organization for library, archives, and records management programs.

Section 7 amends s. 265.284, F.S., relating to chief cultural officer, director of division, powers and duties; making technical changes; designating state arts administrative agency; authorizing framing of state-owned art to be displayed; deleting obsolete language.

Section 8 amends s. 265.2865, F.S., relating to Florida Artists Hall of Fame; deleting obsolete language.

Section 9 amends s. 265.606, F.S., relating Cultural Endowment Program; requiring a post-audit.

Section 10 amends s. 265.701, F.S., relating to cultural facilities; requiring a recordation of a restrictive covenant for grantees; requiring bonds; providing for repayment of grant awards.

Section 11 amends s. 265.702, F.S., relating to regional cultural facilities; requiring a recordation of a restrictive covenant for grantees; requiring bonds; providing for repayment of grant awards.

Section 12 creates s. 265.703, F.S., establishing a citizen support organization for cultural and arts programs of the Division of Cultural Affairs.

Section 13 amends s. 267.031, F.S., relating to the powers and duties of the Division of Historical Resources; providing for establishment of an endowment; revising requirements for regional offices.

Section 14 amends s. 267.0612, F.S., relating to the Florida Historical Commission; providing for continuation of member in office until a replacement is appointed; making technical changes.

Section 15 amends s. 267.0617, F.S., relating to historic preservation grant program; providing for appointment of grant review panel chair.

Section 16 amends s. 267.0619, F.S., relating to historical museum grants; providing for appointment of grant review panel chair.

Section 17 amends s. 267.0731, F.S., relating to Great Floridian Program; deleting obsolete language.

Section 18 amends s. 267.13, relating to prohibited practices and penalties; requiring rules.

Section 19 amends s. 267.16, F.S., relating to Florida Folklife Programs; deleting obsolete language.

Section 20 amends s. 267.173, F.S., relating to historic preservation in West Florida; conforming a reference.

Section 21 amends s. 267.174, F.S., relating to the Discovery of Florida Quincentennial Commemoration Commission; revising dates.

Section 22 provides for repeals.

Section 23 provides for severability.

Section 24 provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None. The bill does not create, modify, or eliminate a revenue source.

#### **2. Expenditures:**

Negligible. See "Fiscal Comments."

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

Local governments would receive revenue through filings. The filing would be either a restrictive covenant or a bond, not both. The Department of State provided the following example of revenue impact for restrictive covenants based on Leon County filings with the Clerk of the Circuit Court: \$10 for the first page, \$8.50 for each additional page; based on a 4 page filing, the revenue would

be \$35.50 per filing. According to the Department of State, if anything is filed on a bond, it is generally a one-page document.

2. Expenditures:

This bill will require local governments receiving grant funding under the cultural facilities program or regional cultural facilities program to record a restrictive covenant or purchase a bond to ensure that the facility continues to be used as required for a period of 10 years. The cost depends on the type of instrument selected by the local government. Costs for restrictive covenants are cited above under the "Revenues" section.

Prices on bonds are based on the cost of construction. Examples of bond prices are structured as follows: \$25 per \$1,000 cost up to the first \$100,000, \$15 per \$1,000 cost from \$100,000 to \$500,000 (the maximum grant award).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require a private sector entity receiving grant funding under the cultural facilities program or regional cultural facilities program to record a restrictive covenant or purchase a bond to ensure that the facility continues to be used as required for a period of 10 years. The cost depends on the type of instrument selected by the grantee. See discussion under "Local Governments" for costs of instruments.

D. FISCAL COMMENTS:

There could be minimal impact on state expenditures associated with the establishment of the citizen support organizations created by the legislation. According to the Department of State, the citizen support organizations created by the bill will assist the department and the state in furthering the programs under the Divisions of Cultural Affairs and Library and Information Services through private resources that can be used to augment those programs.

The Department of State stated that there will be a small, but negligible, cost savings related to the repeal of the indemnity provisions which require an annual report to the Legislature.

Also, the Department of State indicated that the recordation of a restrictive covenant or purchase of a bond for cultural facilities or regional cultural facilities by grantees is a means to protect state investments in such facilities.

Travel and per diem for members of the State Library Council is funded by a federal grant through the Library Services and Technology Act. The additional \$2,600 required by the two new members will be paid through federal funds.

According to the Department of State, the change in the date requirements for the Discovery of Florida Quincentennial Commission's first meeting and submission of the initial master plan draft and the final master plan will have no adverse impact on accomplishing what needs to be done prior to the celebration. However, it does recognize that at this time resources are not available to meet the timeframes currently in law.



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of State to prescribe, by rule, conditions for the use of certain services, property, or facilities by the citizen support organizations created in sections 6 and 12.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2005, the Tourism Committee unanimously passed PCB TURS 05-01 as amended. The amendments to the proposed committee bill were as follows:

- Amendment 1 provided specific authorization to the Division of Historical Resources to establish an endowment that is consistent with its responsibilities under the Historic Preservation Act.
- Amendment 2 moved forward by one year the requirement for the first meeting of the Discovery of Florida Quincentennial Commemoration Commission and the submission of the initial draft of the master plan and the final master plan to the Governor and the Legislature.
- Amendment 3 allows the presiding officer of the Florida Historical Commission to appoint someone to chair a special category historic preservation grants-in-aid review panel when a Commission Member is not available.
- Amendment 4 allows the presiding officer of the Florida Historical Commission to appoint someone to chair a historical museum grants review panel when a Commission Member is not available.
- Amendment 5 requires the Division of Historical Resources to adopt rules related to prohibited practices regarding archaeological sites and objects of historical or archaeological value and to penalties associated with those prohibited practices.
- Amendment 6 deletes the statutory requirement for specific locations for historic preservation regional offices, requires that at least three offices are established, and requires each regional office to have a citizen advisory board in lieu of a citizen support organization, which is currently required.