

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 267.061(1)(a), F.S., declares that

[T]he rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment . . .

One element of the state's system of preserving historic properties is the maintenance of the Florida Master Site File ("site file"). The site file contains information on nearly 28,000 Florida archaeological sites in various formats, including electronic and paper.¹ The site file also contains information about other non-archaeological historic properties. The site file fulfills federal requirements contained in the National Historic Preservation Act of 1966, as amended through 2000, codified in 16 U.S.C. 470a(b)(3)(a) to "conduct a comprehensive survey of historic properties and maintain inventories of such properties". Various parties utilize the information in the site file, including local government staff, consultants charged with preserving archeological and other historic sites, and researchers.

There have been recent incidents involving looting of archaeological sites on state land:²

- In May 2004, Department of Environmental Protection agents arrested two individuals who were digging at Newnan's Lake, a site that has evidence of an archaic American Indian occupation. According to the division, the digging heavily damaged the site. The damage assessment was \$8,960.56.
- In May 2004, two individuals were arrested for unauthorized excavation and for removing arrowheads and tools at Enclave B on Southwest Florida Water Management District lands in Pasco County. The estimated cost of site damage was \$37,249.82.
- In June 2005, Department of Environmental Protection officers arrested one individual for removing artifacts from sites in the Tomoka State Park in Volusia County.
- In March 2005, Fish and Wildlife Conservation Commission officers arrested two individuals for digging at a site in the Lochloosa Wildlife Conservation Area. Based on information from the individuals, a subsequent review of other sites found widespread vandalism.

Current law provides a public records exemption for information identifying the location of an archaeological site contained in site files or other records maintained by the Division of Historical Resources of the Department of State if the division finds that disclosure of such information will create

¹ Section 267.031(5)(n), F.S., names and establishes the site file.

² Section 267.13, F.S., prohibits certain actions, including removing or otherwise altering any archeological site, upon any land owned or controlled by the state or within the boundaries of a designated state archeological landmark or landmark zone. The section of statute also provides for penalties ranging from misdemeanor to felony and administrative fines as well as forfeiture of any materials removed.

a substantial risk of harm, theft, or destruction at such site. Pursuant to the Open Government Sunset Review Act,³ the exemption will repeal on October 1, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial changes.

C. SECTION DIRECTORY:

Section 1 amends s. 267.135, F.S., to remove the repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

³ Section 119.15, F.S.

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.