

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Operations Committee

BILL: SB 1158

INTRODUCER: Senator Joyner

SUBJECT: Florida African-American Culture and Heritage Initiative

DATE: March 8, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Pre-meeting
2.			CM	
3.			TA	
4.				
5.				
6.				

I. Summary:

This bill would: (1) establish the Florida African-American Culture and Heritage Initiative Commission in the Department of State to broaden participation in and appreciation of African-American arts, history and culture in the state; (2) establish the Florida African-American Culture and Heritage Initiative, an alliance of African-American arts, history, and culture communities in the state; (3) require submission of a statewide plan for implementation of the initiative to the Governor and the Legislature; and (4) authorize the department to establish a citizen support organization to assist the commission.

This bill creates section 267.175 of the Florida Statutes.

II. Present Situation:

African-Americans in Florida – Humans first began settling Florida at least 12,000 years ago.¹ The written history of Florida, however, did not begin until about 500 years ago when Juan Ponce de León of Spain arrived near present-day St. Augustine in 1513. He called the area la Florida, in honor of *Pascua florida* or the “feast of the flowers.”²

African-Americans have been part of the history and culture of Florida at least since Estevanico explored Florida with the Spanish explorer Panfilo de Narvaez.³ Estevanico (1500?-1539) was

¹ <http://dhr.dos.state.fl.us/facts/history/summary/>

² *Ibid.*

³ Panfilo de Narvaez (1470?-1528) was a Spanish explorer and soldier. In 1511 he helped conquer Cuba. He led a Spanish royal expedition to North America in about 1527. He died on his expedition to Florida. *See*, <http://www.enchantedlearning.com/explorers/page/n/narvaez.shtml>.

from Azamor, Morocco, and was a Muslim slave of Andrés Dorantes de Carranza.⁴ He was taken on an expedition to Tampa Bay, Florida, in 1528. After a series of hurricanes and battles with Native Americans decimated much of the crew, the ship's pilot sailed to Mexico abandoning the 250 to 300 survivors. The stranded men made 5 makeshift rafts and sailed west, hoping to reach a Spanish settlement in Mexico. When the rafts landed at present-day Galveston Island, Texas, only 80 had survived. By the following spring, there were only 15 men left as the winter had been harsh and they had little food. These survivors traveled west along the Rio Grande. By 1533, their number was reduced to four survivors, including Estevanico. In 1536, eight years after the expedition began, the four finally reached the Spanish settlement of Culiacan. After traveling to Mexico City, they met the Viceroy, who purchased Estevanico. The Viceroy sent Estevanico on an expedition in 1539 to find the fabled seven cities of Cibola. On this trip, Estevanico was killed by Zuni Indians as he entered their pueblo.⁵

By the late 1600s, Spanish Florida had become a safe haven for escaped slaves from the British colonies if they embraced Catholicism and pledged to serve the Spanish Crown. By 1738, the Spanish Governor of Florida authorized the establishment of a settlement about two miles north of St. Augustine called "Gracia Real de Santa Teresa de Mose" or "Fort Mose." It was the first free black community in North America. The fort was described as an earthen-walled fort with Indian-type thatched huts. The community housed thirty-eight men and their families, and had an estimated population of about one hundred people. The residents maintained important social links to St. Augustine, resulting in marriages, baptisms, and fraternal relations between the two communities.⁶

Fort Mose was captured by British General Oglethorpe in 1740 and the inhabitants fled to St. Augustine. Francisco Menendez, the leader of the Ft. Mose community, led his forces in a surprise attack to retake the fort a few weeks later, but in the battle the fort was destroyed. Fort Mose was not rebuilt until 1752. The former enslaved Africans from English colonies lived there as free people until the First Treaty of Paris transferred Florida from Spain to Great Britain. In 1763, the inhabitants of Fort Mose and most other citizens of Spanish St. Augustine relocated to Cuba. Abandoned and forgotten, Fort Mose slowly fell into ruin, and then disappeared.⁷

Florida was admitted into the Union on March 3, 1845. Florida planters first focused on sugar cane, ". . . an effort often associated with the harshest slave-labor conditions."⁸ This crop was less successful than anticipated and planters later switched to cotton.⁹ Both cane and cotton relied upon slave labor to maintain the plantation system. After Emancipation in 1863, African-Americans still provided much of the labor for the state's timber and turpentine industries. Numerous African-Americans have been important leaders in literature, medicine, newspapers, businesses, and education in Florida, including Zora Neale Hurston,¹⁰ A.L. Lewis,¹¹ Mary McLeod Bethune,¹² and the Rev. C.K. Steele.¹³

⁴ <http://www.enchantedlearning.com/explorers/page/e/estevanico.shtml>.

⁵ *Ibid.*

⁶ <http://www.nps.gov/archive/casa/home/ftmose.htm>

⁷ *Ibid.*

⁸ "Slavery in Florida," by Larry Eugene Rivers, , p. 18, University Press of Florida (2000).

⁹ *Ibid.*

¹⁰ Zora Neale Hurston was an American folklorist and author who was raised in Eatonville and died in Jacksonville, Florida. She was best known for her novel, "Their Eyes Were Watching God."

Organizational Structure of the Executive Branch - Chapter 20, F.S., establishes the organizational structure of the executive agencies of state government. Section 20.03(10), F.S., defines “commission” as follows:

“Commission,” unless otherwise required by the State Constitution, means a body created by specific statutory enactment within a department, the office of the Governor, or the Executive Office of the Governor and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department or the Governor.

Section 20.03, F.S., also provides definitions for other entities within the executive branch, including “council or advisory council,” “committee or task force,” and “coordinating council.” The term “council or advisory council” is defined to mean

“. . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.”

“Committee or task force” is defined to mean

“. . . an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.”

“Coordinating council,” is defined to mean

“. . . an interdepartmental advisory body created by law to coordinate programs and activities for which one department has primary responsibility but in which one or more other departments have an interest.”

There is currently no separate Florida African-American Culture and Heritage Commission within the Department of State. African-Americans are represented on the Florida Historical Commission, the Florida Folklife Council, and on the Historic Preservation, Museum, and Arts Grants Review Panels.

¹¹ A.L. Lewis was a millionaire and philanthropist, and was president of the African American Life Insurance Co. in Jacksonville, Florida.

¹² Mary McLeod Bethune founded the Daytona Normal and Industrial Institute for Negro Girls, now called Bethune-Cookman College, in 1904.

¹³ The Rev. C.K. Steele was a civil rights activist, friend and colleague of Martin Luther King Jr., and a key organizer of the successful Tallahassee bus boycott.

III. Effect of Proposed Changes:

The bill creates the Florida African-American Culture and Heritage Initiative Commission within the Department of State. The purpose of the commission is to:

- Broaden, deepen, and diversify statewide participation in and appreciation of African-American arts, history, and culture.
- Assist educational institutions with incorporating African-American history and culture in the curriculum in accordance with state law.
- Fulfill other statutory duties.

Seventeen members are to be appointed to the commission. The following six persons are designated as commissioners: the Secretary of State or designee, the Commissioner of Education or designee, the executive director of the Office of Tourism, Trade, and Economic Development, the chair of the Florida Historical Commission, the chair of the Florida Arts Council; and the chair of the Board of Directors of Visit Florida or designee. Additionally, eleven members are to be appointed as follows:

- Seven appointed by, and serving at the pleasure of, the Governor.
- Two appointed by, and serving at the pleasure of the President of the Senate.
- Two appointed by, and serving at the pleasure of, the Speaker of the House of Representatives.

Appointees must be representatives of the general public, who represent a broad cross-section of the views and interests of the community and the member organizations of the commission, including:

- Educators.
- Clergy.
- Civic and business leaders.
- Philanthropists.
- Visual, creative and performing artists;
- Representatives of African-American arts, history, and cultural organizations.
- Persons having knowledge of, expertise in, or commitment to preserving Florida's African-American culture and heritage.

The commission is required to develop a statewide plan for implementation of the initiative. The commission must submit the initial plan to the Governor, the President of the Senate, and the Speaker of the House no later than January 1, 2009. An updated plan must be presented no later than January 1 of each succeeding year.

The bill also establishes the Florida African-American Culture and Heritage Initiative. It is an alliance of organizations and institutions that comprise the African-American arts, history, and culture communities in the state. The duties and goals of the initiative include, but are not limited to:

- Promoting understanding and appreciation of the history and artistic and cultural contributions of people of African descent.
- Providing guidance, support, and resources for new and emerging African-American arts and historical groups and increasing the level of organizational capacity and program administration of established groups.
- Increasing funding and audiences for local African-American culture and heritage tourism and enriching African-American culture and heritage tourism programming.
- Increasing and attracting corporate sponsorship and participation in African-American culture and heritage programming and tourism.
- Increasing opportunities for young people to learn about and experience African-American arts, history, and culture in schools and youth organizations.
- Investing in future generations of African-American artists and historians by providing leadership development activities, apprenticeships, mentorships, scholarships, and cultural programs.
- Enhancing computer and Internet access and usage within the African-American community.
- Ensuring financial viability of the initiative through a network of community partners, advocates, and supporters, including but not limited to celebrities, philanthropists, public officials, state and local leaders, and corporations.

The bill also permits the Division of Historical Resources of the Department of State to support the establishment of a citizen support organization to assist the commission in carrying out the purposes of the commission and in attaining the goals of the initiative. The Citizen Support Organization (CSO) is authorized to receive funds from other sources for the purpose of funding its activities and implementing the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

On page 4, lines 14-15, the bill states that records and meetings of the commission are subject to the provisions of chapters 119 and 286, F.S. The commission is an executive branch entity created by the Legislature and as such is covered by Article I, s. 24 of the State Constitution, which provides:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body. . . .
- (b) All meetings of any collegial public body of the executive branch of state government. . . .

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In Florida, the doctrine of the separation of powers has been expressly codified in Article II, s. 3 of the State Constitution. This section prohibits the exercise by one branch of the powers of the other two branches. In *Bush v. Schiavo*,¹⁴ the Florida Supreme Court noted

"This Court ... has traditionally applied a strict separation of powers doctrine," *State v. Cotton*, 769 So.2d 345, 353 (Fla. 2000), "and has explained that this doctrine "encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 264 (Fla. 1991)."

The Florida Supreme Court in *Schiavo* further noted:

The Legislature is permitted to transfer subordinate functions "to permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions [citation omitted]." However, under article II, section 3 of the constitution the legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law [citation omitted]." This prohibition, known as the nondelegation doctrine, requires that "fundamental and primary policy decisions ... be made by members of the legislature who are elected to perform those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program [citations omitted]." In other words, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion [citation omitted]." The requirement that the Legislature provide sufficient guidelines also ensures the availability of meaningful judicial review. . . .¹⁵

The bill designates the entity being created to be a "commission" but it is not clear that the entity has quasi-legislative or quasi-judicial powers or both, as defined in ch. 20, F.S. Further, the powers and duties of this entity are not particularly clear. The entity is required to develop a statewide plan for implementation of the initiative and to submit this plan to the Governor and the Legislature, but the requirements for that plan, the standards to be applied, and whether those requirements are mandatory, are not explicated. Further, no legislative approval of that plan is required.

¹⁴ 885 So.2d 321 at 329 (Fla. 2004).

¹⁵ *Ibid* at 331.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the Department of State to provide administrative support and consulting services to the Commission. In order to provide the required support and services, the department advises that two new positions would be necessary – an Administrative Assistant I in the Executive Secretaries and Administrative Assistants category and a Program Administrator in the General and Operations Managers category. Due to the limitations relating to the temporary nature of OPS employment, these positions would need to be recurring FTEs. Additionally, there will be recurring costs for travel and per diem expenses by the 17 commission members.

Recurring Expenditures			
	FY 07-08 Amount/FTE	FY 08-09 Amount/FTE	FY 09-10 Amount/FTE
Salaries and Benefits / 2 FTEs	\$95,381	\$98,242	\$101,189
Expenses/ 2 FTEs	11,759	12,112	12,475
Human Resources Services/ 2 FTEs	802	826	851
Commission Travel and Per Diem	44,000	45,320	46,680
Total Expenditures	\$151,942	\$156,500	\$161,195
Non-Recurring Expenditures			
Expenses/ 2 FTEs	\$6,359	\$0	\$0
OCO/ 2 FTEs	\$2,600	\$0	\$0
Total Expenditures	\$8,959	\$0	\$0

The bill also provides that the Florida African-American Culture and Heritage initiative is to provide resources for new and emerging arts and historical groups, increase funding for tourism, increase corporate sponsorship, and ensure the financial viability of the initiative. Whether any of these funds must be deposited into the state treasury prior to disbursement is not stated in the bill.

VI. Technical Deficiencies:

On page 7, line 5, the bill states that the Division of Historical Resources may support the establishment of a citizen support organization “pursuant to s. 267.17.” It might be appropriate to clarify that this CSO must meet the requirements of that section.

VII. Related Issues:

It is unclear why the bill requires the commission to adopt bylaws for the conduct of its business and to publish and file those bylaws with the Department of State. The commission is not a corporate entity.

The commission does not appear to meet the definition of “commission” in s. 20.03, F.S., but appears to be more akin to a council:

“. . . an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.”

The commission is required to submit an initial plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives annually. It does not appear, however, that any legislative approval of the plan is required. Given the broad definition of the initiative, it may be appropriate to provide for legislative approval of that plan. *See, Other Constitutional Issues, supra.*

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
