

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 591 Archeological Sites and Specimens  
**SPONSOR(S):** Community & Military Affairs Subcommittee, Metz  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 868

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N, As CS	Nelson	Hoagland
2) Transportation & Economic Development Appropriations Subcommittee	13 Y, 0 N	Rayman	Davis
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

The "State Policy Relative to Historic Properties" provides that the 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 is acknowledged to engender a significant loss to the state's quality of life, economy, and cultural environment.

This policy also provides that all treasure trove, artifacts and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title thereto vested in the Division of Historical Resources (Division) of the Department of State for the purposes of administration and protection.

Currently, Florida law prohibits persons from conducting archaeological field investigations on, or removing or attempting to remove, or deface, destroy, or otherwise alter any archaeological site or specimen located upon any land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except under the authority of a permit granted by the division. Persons engaging in these activities can face criminal penalties, administrative fines, and the forfeiture of any collected materials.

CS/HB 591 expands the area where unauthorized archaeological activity is prohibited to include state sovereignty submerged land and land owned by political subdivisions, and authorizes the Division to issue permits for archaeological research at these locations.

The fiscal impact is insignificant on state funds.

The bill has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### State Policy Relative to Historic Properties

Section 267.061, F.S., provides the “State Policy Relative to Historic Properties.” This policy acknowledges that the 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, and that the destruction of these nonrenewable historical resources will engender a significant loss to the state’s quality of life, economy, and cultural environment. It is the policy of the state to:

- provide leadership in the preservation of the state’s historic resources;
- administer state-owned or state-controlled historic resources in a spirit of stewardship and trusteeship;
- contribute to the preservation of non-state-owned historic resources and to give encouragement to organizations and individuals undertaking preservation by private means;
- foster conditions, using measures that include financial and technical assistance, for a harmonious coexistence of society and state historic resources;
- encourage the public and private preservation and utilization of elements of the state’s historically built environment; and
- assist local governments to expand and accelerate their historic preservation programs and activities.

This policy also provides that all treasure trove, artifacts and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title thereto vested in the Division of Historical Resources of the Department of State for the purposes of administration and protection.<sup>1</sup>

##### State Archaeological Landmarks and Landmark Zones

The Division of Historical Resources (Division) may designate an archaeological site of significance to the scientific study or public representation of the state’s historical, prehistoric, or aboriginal past as a “state archaeological landmark.” In addition, the division may designate an interrelated grouping of significant archaeological sites as a “state archaeological landmark zone.” No site or grouping of sites can be designated without the express written consent of a private owner. Upon designation of an archaeological site, the owners and occupants are given written notification by the Division. Once so designated, no person may conduct field investigation activities on the site without first securing a permit from the Division.<sup>2</sup>

##### Archaeological Research Permits

The Division may issue permits for excavation and surface reconnaissance on state lands or lands within the boundaries of designated state archaeological landmarks or landmark zones to institutions which the Division deems to be properly qualified to conduct such activity, subject to Division rules and regulations, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the

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<sup>1</sup> Section 267.061(1)(b), F.S.

<sup>2</sup> Section 267.11, F.S.

archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs.

Those state institutions considered by the Division to permanently possess the required archaeological expertise to conduct the archaeological activities permissible under the provisions of a permit may be designated as accredited institutions. These institutions are allowed to conduct archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or any landmark zone without obtaining an individual permit for each project. The institutions are required to give prior written notice of all anticipated archaeological field activities, together with such information as may reasonably be required by the Division to ensure the proper preservation, protection, and excavation of archaeological resources. However, no archaeological activity can be commenced by the accredited institution until the Division determines that the planned project is in conformity with guidelines, regulations, and criteria. Such determination is made by the Division within 15 days from the date of notification.<sup>3</sup>

### Prohibited Archaeological Practices and Penalties

Any person who by means other than excavation conducts archaeological field investigations on, or removes or attempts to remove, or defaces, destroys, or otherwise alters any archaeological site or specimen located upon land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit granted by the Division or under procedures relating to accredited institutions, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and, in addition, forfeits to the state all specimens, objects and materials collected, together with all photographs and records relating to such material.<sup>4</sup>

A person who engages in the same conduct by means of excavation commits a felony of the third degree, punishable as provided in ss. 775.082, s. 775.083, or s. 775.084, F.S., and any vehicle or equipment used in connection with the violation is subject to forfeiture to the state. Such person may be ordered by the court to make restitution to the state for the archaeological or commercial value and cost of restoration and repair.<sup>5</sup> Individuals also are prohibited, and subject to criminal penalties, for selling or procuring archaeological objects which have been collected in violation of state law.<sup>6</sup>

The Division additionally has authority to institute administrative proceedings to impose an administrative fines of not more than \$500 a day on, and apply to a court of competent jurisdiction for injunctive relief against, any person or business organization that, without written permission of the Division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located on state-owned or state-controlled lands, including state sovereignty submerged lands.<sup>7</sup>

### **Effect of Proposed Changes**

The bill expands the provisions contained in s. 267.13, F.S., related to prohibited archaeological practices and penalties to include state sovereignty submerged land and land owned by political subdivisions as defined by s. 1.01(8), F.S.<sup>8</sup> Any specimens, objects and materials collected in violation of the law are forfeited to the state. The bill also amends s. 267.12, F.S., to provide the Division of Historical Resources with the authority to issue permits for archaeological research permits at these locations.

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<sup>3</sup> Section 267.12., F.S.

<sup>4</sup> Section 267.13(1)(a), F.S.

<sup>5</sup> Section 267.13(1)(b), F.S.

<sup>6</sup> Section 267.13(1)(c), F.S.

<sup>7</sup> Section 267.13(2), F.S.

<sup>8</sup> See, s. 1.01(8), F.S., which defines "political subdivisions" to include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

Currently, the statutes only apply to land owned or controlled by the state, or within the boundaries of a designated state archaeological landmark or landmark zone. Thus, the bill affords other public landowners, who are not covered by current laws and limited to other remedies such as trespass after warning,<sup>9</sup> greater ability to deter persons from searching for archeological finds on their property, while allowing permitting for legitimate archaeological research.

The bill has an effective date of July 1, 2012.

**B. SECTION DIRECTORY:**

Section 1. Amends subsections 267.12 (1) and (2), F.S., relating to archaeological research permits.

Section 2. Amends subsections 267.13 (1) and (2), F.S., relating to archaeological site and specimen prohibited practices and penalties.

Section 3. Provides an effective date of July 1, 2012.

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

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

**1. Revenues:**

Expanding the prohibition of specified activities relating to archaeological sites and resources could result in the collection of additional fines. Between 2004 and 2006, a total of \$6,493.13 was collected pursuant to s. 267.13, F.S. However, no fines have been collected since 2006.<sup>10</sup>

**2. Expenditures:**

Insignificant impact. Clarifying the prohibition of specified activities relating to archaeological sites and resources could result in the need for additional workload and resources related to the fine. Current law allows for an administrative hearing to challenge the imposition of the fine after service of notice.

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

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>9</sup> See, s. 810.09, F.S.

<sup>10</sup> Department of State analysis of HB 591, dated November 19, 2011.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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

Not applicable. The bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Section 267.13(2)(e), F.S., requires the Division to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement that section.

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

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 18, 2012, the Community & Military Affairs Subcommittee adopted a strike-all amendment that makes technical changes to the bill. Additionally, the amendment deletes the reference to "special districts created by the Legislature" as those entities are included in the definition of the term "political subdivision." The amendment also adds language that authorizes the Division to issue permits for archaeological research on state sovereignty land and land owned by political subdivisions.

This analysis is drafted to the Committee Substitute.