

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1188

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Archaeological Sites and Specimens

DATE: March 21, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney	GO	Fav/CS
2.			ATD	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1188 expands existing restrictions on archaeological activities and makes conforming permitting and penalty changes.

Current law prohibits persons, by means other than excavation, from conducting archaeological field investigations on, removing or attempting to remove, or defacing, destroying, or otherwise altering any archaeological site or specimen that is located on land owned or controlled by the state or land within the boundaries of a designated state archaeological landmark or landmark zone, except pursuant to a permit or under procedures relating to accredited institutions granted by the Department of State's Division of Historical Resources. Current law also provides penalties for persons who violate the restrictions and a process by which a person may apply for an archaeological permit.

This bill creates a definition for "water authority" for purposes of the sections amended by the bill. It expands the area where unauthorized archaeological activity is prohibited to also include land owned by a water authority. The bill also adds land owned by a water authority to those lands which are subject to the associated penalty and permitting provisions.

This bill substantially amends sections 267.12 and 267.13 of the Florida Statutes.

II. Present Situation:

State Policy Relative to Historic Properties

The “State Policy Relative to Historic Properties”¹ 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.²

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.³

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.”⁴ In addition, the Division may designate an interrelated grouping of significant archaeological sites as a “state archaeological landmark zone.”⁵ No site or grouping of sites can be designated without the express written consent of a private owner.⁶ Upon designation of an archaeological site, the owners and occupants are given

¹ Section 267.061, F.S.

² Section 267.061(1)(a), F.S.

³ Section 267.061(1)(b), F.S.

⁴ Section 267.11, F.S.

⁵ *Id.*

⁶ *Id.*

written notification by the Division.⁷ Once so designated, no person may conduct field investigation activities on the site without first securing a permit from the Division.⁸

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 archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs.⁹

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.¹⁰ 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.¹¹ 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.¹² 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.¹³ Such determination is made by the Division within 15 days from the date of notification.¹⁴

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.¹⁵

⁷ *Id.*

⁸ *Id.*

⁹ Section 267.12., F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 267.13(1)(a), F.S.

A person who engages in the same conduct by means of excavation commits a felony of the third degree, punishable as provided in s. 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.¹⁶ Individuals also are prohibited, and subject to criminal penalties, for selling or procuring archaeological objects which have been collected in violation of state law.¹⁷

The Division additionally has authority to institute administrative proceedings to impose an administrative fine 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.¹⁸

Water Authorities

Current law does not define “water authority.” However, the Legislature has created two independent special districts of the state that are currently titled “water authority.”

The Lake County Water Authority, created as the Ocklawaha Basin Recreation and Water Conservation Control Authority,¹⁹ was renamed to its current name in 2000.²⁰ Its duties include:

- Controlling and conserving the freshwater resources of Lake County (county);
- Fostering and improving the tourist business in the county by improvements to the county’s streams, lakes, and canals;
- Providing recreational facilities for the county’s tourists, citizens, and taxpayers by a more efficient use of the county’s streams, lakes, and canals;
- Preserving, protecting, and improving the county’s fish and wildlife; and
- Protecting the county’s freshwater resources through assisting local governments in treatment of stormwater runoff.²¹

The Tohopekaliga Water Authority, created within Osceola County,²² is tasked with performing such acts as shall be necessary for the sound planning, acquisition, development, operation, and maintenance of governmentally-owned potable and non-potable water and wastewater management and delivery systems within its district and its service area.²³

¹⁶ Section 267.13(1)(b), F.S.

¹⁷ Section 267.13(1)(c), F.S.

¹⁸ Section 267.13(2), F.S.

¹⁹ Chapter 29222, L.O.F.

²⁰ Chapter 2000-492, L.O.F.

²¹ *Id.*

²² Chapter 2003-368, s. 4(2), L.O.F. The chapter also authorizes expansion of water authority’s boundary to include any service area within the boundaries of an affected general purpose local government upon the adoption of a resolution by the governing body of the affected general purpose local government authorizing the water authority to provide its service and facilities therein (*id.*).

²³ Chapter 2003-368, s. 5, L.O.F.

In addition to “water authority,” the names of legislatively-created entities tasked with water management-related duties include, but are not limited to:

- Water *supply* authority;²⁴
- Aqueduct authority;²⁵ and
- Water management district.²⁶

The specific duties of such entities vary, but all are related to the management or provision of water resources.

III. Effect of Proposed Changes:

For purposes of the sections amended by this bill, the bill defines “water authority” to mean an independent special district created pursuant to s. 189.404, F.S.,²⁷ whose purpose is to control and conserve freshwater resources.

This bill expands the area where unauthorized archaeological activity is prohibited to also include land owned by a water authority. The bill also adds land owned by a water authority to those lands which are subject to the associated penalty and permitting provisions.

The bill conforms a cross-reference to numbering changes made by the bill.

The bill’s effective date is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Florida Constitution provides that no county or municipality may be bound by any general law that mandates it to spend funds or to take an action requiring the expenditure of funds unless the Legislature determines that such law fulfills an important state interest *and* one of specified other requirements is met.²⁸ Certain laws, including those with an insignificant fiscal impact, are exempt from the mandates restrictions of the section.²⁹

²⁴ Section 373.713(1), F.S., provides that if certain conditions are met, regional water supply authorities may be created as voluntary cooperatives between local governments for the purpose of developing, recovering, storing, and supplying water for county or municipal purposes in such a manner as will give priority to reducing adverse environmental effects of excessive or improper of water from concentrated areas. Florida has numerous water supply authorities, including, but not limited to, the Peace River Manasota Regional Water Supply Authority (<http://www.regionalwater.org/>), the Withlacoochee Regional Water Supply Authority (<http://www.wrwsa.org/>), and the South Metro Water Supply Authority (<http://www.southmetrowater.org/>) (all websites last visited on March 18, 2013).

²⁵ See, for example, the Florida Keys Aqueduct Authority, created by ch. 76-441, L.O.F. The term “aqueduct authority” is not defined in the Florida Statutes.

²⁶ Section 373.019(23), F.S., defines “water management district” to mean any flood control, resource management, or water management district operating under the authority of the chapter. Florida has five regional water management districts: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida (see “*Water Management Districts*,” Florida Department of Environmental Protection, <http://www.dep.state.fl.us/secretary/watman/> (last visited March 18, 2013)).

²⁷ Section 189.404, F.S., provides requirements for the creation of independent special districts.

²⁸ Article VII, s. 18(a) of the Florida Constitution. The specified other requirements are:

This bill may require counties and municipalities to take actions that may require the expenditure of funds. If so, the bill may be exempt if the fiscal impact is insignificant.

If the bill has a significant fiscal impact, it may still qualify for an exception if it contains a legislative finding that it fulfills an important state interest *and* meets one of the other specified requirements. The bill does not contain a finding that it fulfills an important state interest; however, it may meet one of the other specified requirements. If the bill is interpreted to apply to all water management entities of the state, it may apply to all persons similarly situated. The bill also could meet one of the other specified requirements by passing with a two-thirds vote of the membership of each house.³⁰

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
 - The Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality;
 - The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature;
 - The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; *or*
 - The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance. *Id.*

²⁹ Article VII, s. 18(d) of the Florida Constitution. Other laws that are exempt from the mandates requirements are:

- Laws adopted to require funding of pension benefits existing on the effective date of Art. VII, s. 18 of the Florida Constitution;
- Criminal laws;
- Election laws;
- The general appropriations act;
- Special appropriations acts;
- Laws reauthorizing but not expanding then-existing statutory authority; and
- Laws creating, modifying, or repealing noncriminal infractions. *Id.*

³⁰ A two-thirds vote of the membership of each house requires a two-thirds vote of *all* members, not just of those present and voting.

C. Government Sector Impact:

State Government

Revenues

Expanding the prohibition of specified activities relating to archaeological sites and resources could result in the collection of additional administrative fines or restitution. The Department of State (Department) is unable to estimate the amount of such potential revenues because they would be dependent on successful prosecutions.³¹

Expenditures

In its analysis for the original bill, the Department stated that passage of the bill would double the current permitting workload and require an additional full-time equivalent position in the amount of \$45,120.³² It is unclear whether the committee substitute's creation of a definition for "water authority" would affect the Department's estimate on this issue.

Additionally, the Department states that it will incur indeterminate costs associated with collection, conservation, cataloguing, and storage for archaeological artifacts recovered on land owned by a water authority.³³

The Department also states that state law enforcement may need to be enhanced to prevent unauthorized archaeological activities on land owned by a water authority.³⁴

Local Government

Revenues

None.

Expenditures

The Department states that water authority land managers will be required to coordinate with the Department's Division of Historical Resources in the preparation of permits prior to anticipated archaeological field activities.³⁵

The Department also states that local law enforcement may need to be enhanced to prevent unauthorized archaeological activities on land owned by a water authority.³⁶

It is unclear whether any such effects on local government would be absorbed within existing resources.

³¹ Department of State bill analysis, dated March 14, 2013 (on file with the Senate Governmental Oversight and Accountability Committee).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 21, 2013:
The CS differs from the original bill in that it creates a definition for “water authority.”

- B. **Amendments:**

None.