

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: SB 1054

INTRODUCER: Senators Dean and Grimsley

SUBJECT: Historic and Archaeological Artifacts

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	Pre-meeting
2.			ATD	
3.			FP	

I. Summary:

SB 1054 requires the Department of State (DOS) to implement a program which will issue permits to the public performing excavations on sovereignty submerged lands. The permit will require the permitholder to report all discoveries and removed artifacts to the DOS. The program will:

- Permit the DOS to inspect the artifacts;
- Limit the types of tools which may be used to extract artifacts from a packed matrix in a river or lake bottom;
- Require DOS to provide a map of areas that are excluded from excavation activities; and
- Transfer ownership rights from the State to the permitholder.

The bill imposes a \$100 fee for the annual permit. The bill requires DOS to establish penalties for violations of the program requirements, including an administrative fine of up to \$1,000 and forfeiture of the permit and ownership rights for any artifacts discovered under the program.

The bill takes effect on July 1, 2016.

II. Present Situation:

Sovereignty Lands

The ownership of land, including land which is underwater, is described in Article 10, Section 11 of the Florida Constitution, which provides:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private

use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

In addition, s. 253.12(1), F.S., provides that submerged lands belong to the State:

Title to tidal lands vested in state.—

Except submerged lands heretofore conveyed by deed or statute, the title to all sovereignty tidal and submerged bottom lands, including all islands, sandbars, shallow banks, and small islands made by the process of dredging any channel by the United States Government and similar or other islands, sandbars, and shallow banks located in the navigable waters, and including all coastal and intracoastal waters of the state and all submerged lands owned by the state by right of its sovereignty in navigable freshwater lakes, rivers, and streams, is vested in the Board of Trustees of the Internal Improvement Trust Fund. For purposes of fixing bulkhead lines, restrictions on filling land and dredging beyond bulkhead lines, and permits required for filling and dredging, the board shall exercise the same authority over submerged lands owned by the state by right of its sovereignty in navigable freshwater lakes, rivers, and streams as it does over submerged lands otherwise defined in this subsection.

Section 253.12(2)(a), F.S., provides that the “Board of Trustees of the Internal Improvement Trust Fund may sell and convey such islands and submerged lands if determined by the board to be in the public interest” as long as marine life is taken into consideration.

State Policy

Florida law 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.”¹ Florida law provides further that “the destruction of these nonrenewable historical resources will engender a significant loss to the state’s quality of life, economy, and cultural environment.”²

Accordingly, Florida has adopted a state policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state’s historic environment and resources.³ Florida has also adopted the state policy that

all treasure trove, artifacts, and such objects having intrinsic or historical and archaeological value which have been abandoned on state-owned lands or state-owned sovereignty submerged lands shall 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.⁴

Under Florida law, “historic property” or “historic resource” means “any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or

¹ Section 267.061(1)(a), F.S.

² *Id.*

³ *Id.*

⁴ Section 267.061(1)(b), F.S.

archaeological value, and folklife resources.” Such properties or resources may include, but are not limited to, the following:

- Monuments;
- Memorials;
- Indian habitations;
- Ceremonial sites;
- Abandoned settlements;
- Sunken or abandoned ships;
- Engineering works;
- Treasure trove;
- Artifacts; or
- Other objects with intrinsic historical or archaeological value, relating to the history, government, and culture of the state.⁵

The Florida Department of State, Division of Historical Resources

In order to carry out the state policy mentioned above, Florida law bestows upon the Division of Historical Resources (Division) particular powers and responsibilities.⁶ The Division’s duties include:

- Cooperating with federal, state and local governments, private organizations and citizens to direct and conducting a statewide survey of historic resources and to maintain an inventory of such resources;⁷
- Developing a statewide historic preservation plan;⁸
- Ensuring that historic resources are taken into consideration at all levels of planning and development;⁹
- Advising and assisting, as appropriate, federal and state agencies, local governments, organizations, and individuals in carrying out and developing historic preservation responsibilities and programs;
- Providing public information, education, and technical assistance relating to historic preservation programs;
- Carrying out on behalf of the state the programs of the National Historic Preservation Act of 1966, as amended;
- Establishing professional standards for the preservation, exclusive of acquisition, of historic resources in state ownership or control;¹⁰
- Protecting historical resources abandoned on state-owned lands or on state-owned sovereignty submerged lands;¹¹

⁵ Section 267.021(3), F.S.

⁶ Section 267.031(5), F.S.

⁷ Section 267.031(5)(a), F.S. The Division shall maintain an adequate record of all objects in its custody which have a historical or archaeological value. Once each year, on July 1 or as soon thereafter as practicable, the division shall take a complete inventory of all such objects in its custody the value or cost of which is \$500 or more and a sample inventory of such objects the value or cost of which is less than \$500. Section 267.115(1), F.S.

⁸ Section 267.031(5)(b), F.S.

⁹ Section 267.031(5)(d), F.S.

¹⁰ Section 267.031(5)(k), F.S.

¹¹ Section 267.031(5)(n), F.S.

- Advising and assisting, as appropriate, federal and state agencies, local governments, and organizations and individuals in the recognition, protection, and preservation of Florida's archaeological sites and artifacts;¹² and
- Taking other actions necessary or appropriate to promote the location, acquisition, protection, preservation, operation, and interpretation of historic resources to foster an appreciation of Florida history and culture.¹³

The Division may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations and individuals, or federal agencies as it may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its powers.¹⁴

Further, Florida law authorizes and directs all law enforcement agencies and offices to assist the Division in carrying out its duties.¹⁵

Permits

The Division may issue permits for the following activities:

- Survey, exploration, excavation, and salvage activities to identify or recover historical property;
- Archaeological excavation for scientific or educational purposes on state-owned lands or on state-owned sovereignty submerged lands;¹⁶ and
- Exploration and salvage of historic shipwreck sites by commercial salvors on state-owned sovereignty submerged lands.¹⁷

Florida law requires the Division to adopt rules to administer the issuance of permits for all such activities.¹⁸ Additionally, the Division must adopt rules to administer the transfer of objects recovered by commercial salvors under permit in exchange for recovery services provided to the state.¹⁹

Criminal Penalties for Violations

Florida law provides that any person that removes or attempts to remove or defaces, destroys, or otherwise alters historical resources on state land without a permit must forfeit all objects or materials collected from the land and is subject to criminal penalties.²⁰ Any person who conducts

¹² Section 267.031(5)(o), F.S.

¹³ Section 267.031(5), F.S.

¹⁴ Section 267.031(2), F.S.

¹⁵ Section 267.031(4), F.S.

¹⁶ Section 267.031(5)(n), F.S.; *see also* s. 267.12, F.S., regarding research permits.

¹⁷ Section 267.031(5)(n), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See* s. 267.13(1)(a),(b), F.S.

such action by means “other than” excavation²¹ commits a misdemeanor in the first degree.²² Any person who knowingly and willfully conducts such action by means of excavation commits a felony in the third degree.²³

Moreover, any person who offers for sale or exchange any object or material with knowledge that it has previously been collected or excavated in violation of law without the express consent of the Division, commits a felony of the third degree.²⁴

Maps of Locations of Archaeological Sites

Any information identifying the location of an archaeological site that is held by the Division of Historical Resources is exempt from public disclosure if the Division finds that the disclosure of such information would result in substantial harm, theft or destruction of the archaeological site.²⁵

The public necessity for the exemption provides:²⁶

- (1) The Legislature finds that it is a public necessity that information identifying the location of archaeological sites be exempt from public records requirements because the state has a serious problem with archaeological looting. The exact location of an archaeological site should be exempt from disclosure if the Division of Historical Resources determines that disclosure of the site location will create a substantial risk of harm, theft, or destruction at the site.
- (2) The Legislature also finds that the lack of protection for sensitive sites puts the federal government in a difficult position. The Federal Government is mandated to share site-specific information with the Florida State Historic Preservation Officer to comply with section 106 of the National Historic Preservation Act of 1966, as amended. However, section 304 of the National Historic Preservation Act of 1966, as amended,²⁷ protects specific information concerning the location and character of

²¹ “Excavation” means any manmade cut, cavity, trench, or depression in the earth’s surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in s. 373.019(22), F.S. Section 556.102(6), F.S.

²² Section 267.13(1)(a), F.S.

²³ Section 267.13(1)(b), F.S.

²⁴ Section 267.13(1)(c), F.S.

²⁵ Section 267.135, F.S.

²⁶ Ch. 2001-162, s. 2, Laws of Fla.

²⁷ Section 304 USC 4702-3 provides:

(a) Authority to Withhold from Disclosure.-The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may (1) cause a significant invasion of privacy; (2) risk harm to the historic resource; or (3) impede the use of a traditional religious site by practitioners.

(b) Access Determination.-When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

(c) Consultation with Council.-When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

cultural resources, which includes archaeological sites, when sharing that information could place them in jeopardy.

- (3) The Legislature also finds that new implementation guidelines for the National Historic Preservation Act of 1966, as amended, require increased consultation with federally recognized tribes. The Legislature finds that managing information concerning Native American sacred sites and sites of cultural patrimony requires this exemption, because credible stewardship in this area necessitates the ability to protect sensitive information from public dissemination.

III. Effect of Proposed Changes:

The bill requires the Division to implement a program to administer the discovery of isolated historic or archaeological artifacts from sovereignty submerged lands. The program must, at a minimum, include the following:

- An application for an annual permit and an application fee of \$100;
- A written agreement to report all discovered and removed artifacts to the Division within 14 days after the discovery and removal, along with a map indicating the location of the discovery and photographs of the artifacts, and to allow the Division to inspect, analyze, and photograph any such artifacts;
- A requirement that tools may not be used for the excavation of any isolated artifacts, except that a trowel or hand-held implement may be used to extract exposed artifacts from a packed matrix in a river or lake bottom;
- A map, that must be provided to an applicant with the issuance of a permit, of clearly defined areas and sites that are excluded from excavation activities;
- Authorization to transfer ownership rights for discovered artifacts to the permit-holder;
- Penalties for violations of program requirements, including, but not limited to, an administrative fine of up to \$1,000 and forfeiture of the permit and ownership rights for any artifacts discovered under the program.

The bill removes the discretion of DOS to retain possession of artifacts. It also removes the current requirement that the state may exchange information about the artifacts for ownership rights.

The bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

The bill requires the DOS to provide maps of areas which are excluded from excavation activities. Any information identifying the location of an archaeological site that is held by the Division of Historical Resources. Such information is exempt from public disclosure if the Division finds that the disclosure of such information would result in substantial harm, theft or destruction of the archaeological site.²⁸ The bill appears to contravene the intent of the Legislature when it enacted the exemption, and may conflict with federal law.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Those members of the public wishing to participate in the program will be required to pay a \$100 annual application fee to hold a permit. People in violation of the law will be subject to a fine of \$1000.

C. Government Sector Impact:

The fiscal impact relating to the revenues generated by the application is unknown.

According to the DOS, three full-time equivalent (FTE) positions will be needed to administer the program. The estimated annual cost for salaries of these positions is \$126,445. Presumably, this estimated cost does not include the nonrecurring costs associated with new positions. In addition, DOS will need to develop a software program for the new program, the cost of which is currently unknown.²⁹

VI. Technical Deficiencies:

The bill does not define “packed matrix.”

The bill specifies that certain equipment must be used in river or lake bottoms, but does not address if such equipment should also be used on seashores.

²⁸ Section 267.135, F.S.

²⁹ Department of State Bill Analysis for HB 803, Dated January 6, 2016.

VII. Related Issues:

As noted in the Present Situation above, section 267.135, F.S., makes any information identifying the location of an archaeological site held by the Division exempt from public disclosure if the Division finds such disclosure will create a substantial risk of harm, theft, or destruction of the site.

This bill requires the Division to provide a map to each permit holder showing the areas that are excluded from excavation activities. The requirement under this bill may be in conflict with the Division's current duty to protect such information.

VIII. Statutes Affected:

This bill substantially amends section 267.115 of the Florida Statutes:

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.