

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1690

INTRODUCER: Senator Torres

SUBJECT: Preservation of Memorials

DATE: February 10, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Wagoner</u>	<u>Jones</u>	<u>CJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1690 provides that anyone who damages, destroys, takes, or removes a memorial without permission is liable for the full cost to repair or replace the memorial. Where such conduct is intentional, a person will also be liable for treble damages, attorney fees, and court costs associated with an action brought to recover damages.

The bill further provides that no object that would obstruct the view of a memorial or that would convey information about such a memorial may be placed on or adjacent to a memorial existing before 2019 without written approval from the Secretary of State.

The bill also establishes that the damaging, defacing, or removing of a memorial constitutes criminal mischief, a third degree felony, punishable by a term of imprisonment up to 5 years and a fine of up to \$5,000.

The bill has an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

**II. Present Situation:**

**Memorials**

Chapter 265, F.S., regards memorials, museums, and arts and culture. The legislative intent of the chapter is to recognize the vast cultural resources available in the state and to provide state support for, and gain national and international recognition of, efforts, works, and performances of Florida artists, agencies, museums, and nonprofits.<sup>1</sup> The chapter designates the Secretary of State as chief cultural officer of the state, and creates the division of “state arts administrative

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<sup>1</sup> Section 265.282, F.S.

agency” to administer federal arts funding, award grants, and consult with and advise individuals, groups, organizations, and agencies and officials concerning the acquisition of fine arts.<sup>2</sup> The division also sponsors and promotes performances and exhibits, conducts cultural programs and exchanges, and accepts funding and support for its purposes.<sup>3</sup>

### **Civil Liability and Treble Damages**

A statute may subject a person to civil liability for damages caused by the person’s criminal behavior. “Civil liability” is defined by Black’s Law Dictionary as the “debt or legal obligation from a private wrong amounting to the damage done.”<sup>4</sup> “Treble damages” are special damages provided by statute in certain cases found by a jury, where the damages to be paid are triple the amount of damage actually caused.<sup>5</sup>

### **Criminal Mischief**

Section 806.13, F.S., defines and provides penalties for criminal mischief. A person commits criminal mischief if he or she (1) willfully and maliciously (2) injures or damages (3) real property belonging to another, including via the placement of graffiti. If the damage to property is valued at \$200 or less, it is a second degree misdemeanor;<sup>6</sup> between \$200 and \$1,000, it is a first degree misdemeanor;<sup>7</sup> and greater than \$1,000 or causing interruption or impairment of business or public service, it is a third degree felony.<sup>8</sup>

A third degree felony is punishable by a term of imprisonment up to 5 years and a fine of up to \$5,000.<sup>9</sup>

The section also provides a third degree felony for willful and malicious defacement, injury, or damage to certain public goods or places of worship. A person convicted under the section is also required to pay a fine between \$250 and \$1,000,<sup>10</sup> and perform at least 100 hours of community service.<sup>11</sup>

### **Penalties for Minors**

A minor found to have committed an act of criminal mischief may have his or her driving privilege revoked or withheld for up to one year.<sup>12</sup> A minor whose driving privilege has been revoked, suspended, or withheld under the section may elect to reduce the sentence by

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<sup>2</sup> Section 265.284, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> “Civil Liability,” Black’s Law Dictionary 435 (9th ed. 2009).

<sup>5</sup> “Treble Damages,” Black’s Law Dictionary 435 (9th ed. 2009).

<sup>6</sup> Section 806.13(1)(b)1., F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>7</sup> Section 806.13(1)(b)2., F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>8</sup> Section 806.13(1)(b)3., F.S., punishable as provided in ss. 775.082, 775.083, and 775.084, F.S.

<sup>9</sup> Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

<sup>10</sup> Section 806.13(6), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 806.13(7), F.S.

performing community service, at a rate of one day's suspension per hour community service worked.<sup>13</sup> Such community service is to be in the form of cleaning graffiti from public property.

### III. Effect of Proposed Changes:

**Section 1** provides that the act may be cited as the "Historical Memorials Protection Act."

**Section 2** creates s. 265.710, F.S. The bill defines the term "memorial" as a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is:

- Constructed and located with the intent of being permanently displayed or perpetually maintained;
- Dedicated to a historical person, entity, event, or series of events; and
- Honoring or recounting the military service of a U.S. Armed Forces personnel, or the public service of a resident of Florida or the United States.

The definition of memorial includes, but is not limited to:

- Florida Women's Hall of Fame;
- Florida Medal of Honor Wall;
- Florida Veterans' Hall of Fame;
- POW-MIA Chair of Honor Memorial;
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden;
- Florida Law Enforcement Officers' Hall of Fame;
- Florida Holocaust Memorial;
- Florida Slavery Memorial; and
- Any other memorial located within the Capitol Complex, including Waller Park.

The bill provides that any person or entity that damages, destroys, takes, or removes a memorial without authorization is civilly liable for the full cost of repair or replacement of the memorial. Where such conduct is intentional, such person in addition is liable for treble damages, attorney fees, and court costs associated with any action brought to recover the damages for the cost of repair or replacement. The bill provides standing to a resident of this state, a historical preservation organization, a military veteran or veterans' organization, or a law enforcement or firefighter benevolent organization.

The bill further provides that, without express written approval of the Secretary of State, no object<sup>14</sup> that would obstruct the view of a memorial on public property, or that would convey information about the memorial, may be placed on or adjacent to any memorial in existence on or before January 1, 2019.

**Section 3** adds a new subsection to s. 806.13, F.S., regarding criminal mischief. The new subsection provides that a person may not willfully damage, deface, or remove a memorial. It specifies memorials<sup>15</sup> owned by a governmental entity, museum, historical society or similar

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<sup>13</sup> Section 806.13(8), F.S.

<sup>14</sup> "plaque, sign, picture, marker, exhibit, notice, or other object."

<sup>15</sup> Given the same definition as in section 1 of the bill.

organization, or memorials located in a cemetery or on a grave or tombstone. The subsection provides that the violator commits a third degree felony.<sup>16</sup>

The bill also provides that a minor choosing to reduce his or her period of driver's license suspension, revocation, or withholding via community service may apply the cleaning of graffiti on memorials or the cleanup of parks dedicated to veterans or historic sites towards such community service requirement.

**Section 4** provides that the bill takes effect October 1, 2020.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

This bill does not impose, authorize, or raise a state tax or fee.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The bill does not impact state or local taxes or fees.

##### **B. Private Sector Impact:**

To the extent that this bill acts as a deterrent, memorial caretakers may experience a positive fiscal impact on less repairing and cleaning memorials.

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<sup>16</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S. Section 775.084, F.S., provides enhanced penalties for qualifying repeat offenders.

**C. Government Sector Impact:**

The bill has an indeterminate fiscal impact. The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, has not yet considered the bill. However, the bill may have a positive indeterminate prison bed impact (an increase in prison beds) because the bill creates a new felony offense. To the extent that this bill acts as a deterrent, public memorial caretakers may experience a positive fiscal impact on less repairing and cleaning memorials.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that no object that would obstruct the view of a memorial that is located on public property or that would convey information about such a memorial may be placed on or immediately adjacent to any such memorial *in existence on or before* January 1, 2019, without the express authorization of the Secretary of State. Therefore, if the memorial is erected *after* January 1, 2019, this provision is inapplicable. The purpose for the distinction is unclear.

The bill provisions regarding civil damages specifies that the removal of a memorial *without authorization* from the appropriate entity may subject a person to civil liability. However, the provision regarding criminal charges provides that a person may not *remove by any means* a memorial without exempting those with authorization from the appropriate entity. Therefore, for example, a public parks employee that is ordered to remove a memorial located on the park by their employer would be in violation of this provision.

**VIII. Statutes Affected:**

This bill creates section 265.710 of the Florida Statutes.

This bill substantially amends section 806.13 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.