

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 1690

INTRODUCER: Senator Torres

SUBJECT: Preservation of Memorials

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1690 amends s. 265.710, F.S., to provide that anyone who damages, destroys, takes, or removes a memorial without permission is liable for the full cost to repair or replace the memorial. Such a person will also be liable for treble damages, attorney fees, and court costs associated with an action brought to recover damages.

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

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 consent from the Secretary of State.

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.¹ The chapter designates the Secretary of State as chief cultural officer of the state, and creates the division of “state arts administrative

¹ 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.² The division also sponsors and promotes performances and exhibits, conducts cultural programs and exchanges, and accept funding and support for its purposes.³

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.”⁴ “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.⁵

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;⁶ between \$200 and \$1,000, it is a first degree misdemeanor⁷; and greater than \$1,000 or causing interruption or impairment of business or public service, it is a third degree felony.⁸

A third degree felony is punishable by a term of imprisonment up to 5 years and a fine up to \$5,000.⁹

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 \$1,000¹⁰, and perform at least 100 hours of community service.¹¹

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.¹² A minor whose driving privilege has been revoked, suspended, or withheld under the section may elect to reduce the sentence by

² Section 265.284, F.S.

³ *Id.*

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

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

⁶ Section 806.13(1)(b)1. F.S., punishable as provided in s. 775.082 or s. 775.083, F.S.

⁷ Section 806.13(1)(b)2. F.S., punishable as provided in s. 775.082 or s. 775.083, F.S.

⁸ Section 806.13(1)(b)3. F.S., punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

⁹ *See* ss. 775.082, 775.083, and 775.084, F.S., as referenced in the bill, for more detailed sentencing regulations.

¹⁰ Section 806.13(6), F.S.

¹¹ *Id.*

¹² Section 806.13(7), F.S.

performing community service, at a rate of one day's suspension per hour community service worked.¹³ 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 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. Furthermore, in addition such person 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 object¹⁴ 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 memorials¹⁵ owned by a governmental entity, museum, historical society or similar

¹³ Section 806.13(8), F.S.

¹⁴ "plaque, sign, picture, marker, exhibit, notice, or other object."

¹⁵ 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.

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.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. No analysis on the prison bed impact has been conducted yet for this bill. 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:

None.

VIII. Statutes Affected:

This bill substantially amends sections 265.710 and 806.13, 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.