

**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 Appropriations

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**BILL:** PCS/SB 1404 (817458)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee Transportation, Tourism, and Economic Development); and Senator Hooper

**SUBJECT:** Cultural and Historical Programs

**DATE:** April 14, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Wells</u>	<u>Hrdlicka</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Wells</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1404 designates the Museum of Florida History as the official state history museum and makes several changes to the Division of Cultural Affairs and Division of Historical Resources.

The bill renames the “Division of Cultural Affairs” to the “Division of Arts and Culture” and designates the Secretary of State as “Florida’s Chief Arts and Culture Officer.”

To better align the duties of the Division of Arts and Culture and the Division of Historical Resources, the bill transfers the:

- Florida Folklife Program from the Division of Historical Resources to the newly named Division of Arts and Culture; and
- The operation of the Museum of Florida History from the Division of Cultural Affairs to the Division of Historical Resources.

The bill requires the Division of Historical Resources to establish professional standards for the preservation of the collections under state ownership and take appropriate action to foster appreciation of Florida history and culture.

The bill transfers and revises provisions relating to property on loan to museums and property abandoned at museums. The bill revises inventory responsibilities of the Division of Historical

Resources for objects of historical or archaeological value by raising the threshold value or cost of objects in custody to \$1,000 instead of \$500.

The Department of State may experience an indeterminate positive fiscal impact as the reassignment of the Florida Folklife Program brings the program in line with new federal funding program requirements from the National Endowment for the Arts.

The bill takes effect on July 1, 2021.

## II. Present Situation:

### Official State Emblems

Chapter 15, F.S., statutorily designates official state emblems. To date, there are designations for an official state seal, motto, tree, fruit, beverage, citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal and saltwater mammal, butterfly, reptile and saltwater reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad museums, transportation museum, flagship, soil, fiddle contest, band, sports hall of fame, pie, honey, horse, and heritage cattle breed.<sup>1</sup>

### Department of State

The Department of State (department), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration. The head of the department is the Secretary of State (Secretary).<sup>2</sup> The Secretary is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary performs functions conferred by the State Constitution upon the custodian of records.

The department is authorized to create Community Support Organizations for its Divisions of Cultural Affairs,<sup>3</sup> Historical Resources,<sup>4</sup> and Library and Information Services.<sup>5</sup> Citizen support organizations (CSOs) are statutorily created entities that are generally required to be nonprofit corporations and are authorized to carry out specific tasks in support of public entities or public causes.

### *The Division of Cultural Affairs*

The Division of Cultural Affairs is Florida's designated state arts agency. The division promotes arts and culture as essential to the quality of life for all Floridians. "To promote excellence and encourage access to cultural opportunities, the division provides funding, programs and resources, including grants for: arts in education, local arts agencies, state service organizations,

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<sup>1</sup> Sections 15.0301 through 15.0527, F.S.

<sup>2</sup> Section 20.10, F.S.

<sup>3</sup> Section 265.703(1), F.S.

<sup>4</sup> Section 267.17(1), F.S.

<sup>5</sup> Section 257.43(1), F.S.

museums, theater, dance, folk arts, literature, media arts, multidisciplinary, music, sponsor/presenter, and visual arts programs and projects.”<sup>6</sup>

The Division of Cultural Affairs also administers the Museum of Florida History and has its offices in the historic Brokaw-McDougall House. “Opened in 1977, the Museum of Florida History collects, preserves, exhibits, and interprets evidence of past and present cultures in Florida, and promotes knowledge and appreciation of this heritage. As the State’s History Museum, it focuses on artifacts and eras unique to Florida’s development and on roles that Floridians have played in national and global events. Through exhibits, educational programs, research, and collections, the Museum reflects the ways that people have shaped and reacted to their cultural and natural environments.”<sup>7</sup> The Division of Cultural Affairs also oversees the Museum and Capitol gift shops as well as the citizen support organization charged with supporting the Museum.

The Friends of the Museums of Florida, Inc., is the CSO created to support programs, exhibits, collections, and activities of the Museum of Florida History and the Knott House Museum.<sup>8</sup> A citizen support organization is defined as an organization that is:

- A nonprofit corporation approved by the Department of State;
- Organized and operated to conduct programs and activities, raise funds, request and receive grants, and make expenditures to benefit the division;
- Determined by the division to be consistent with the goals of the division and in the best interest of the state; and
- Approved in writing by the division to operate for the benefit of the division.<sup>9</sup>

The identity of donors to the CSO who desire to remain anonymous are confidential and exempt from public records requirements.<sup>10</sup>

### ***Florida Arts and Cultural Act***

The Florida Arts and Cultural Act is set forth in ss. 265.281-265.709, F.S. The Legislative intent of the Act is to provide state support for, and to gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums and nonprofit organizations.<sup>11</sup> The Act defines the term “division” to mean the Division of Cultural Affairs of the Department of State.<sup>12</sup> The division is charged with directly administering and overseeing all programs authorized by the Act. The division’s duties include:

- Accepting and administering state and federal funds appropriated by the Legislature or funds received from other public or private sources;

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<sup>6</sup> Department of State, Division of Cultural Affairs, *About Us, Mission*, available at <https://dos.myflorida.com/cultural/about-us/mission/> (last visited on March 11, 2021).

<sup>7</sup> Section 265.707, F.S. Department of State, Museum of Florida History, *About*, available at <https://museumoffloridahistory.com/> (last visited March 11, 2021).

<sup>8</sup> Department of State, Museum of Florida History, *About the Friends of the Museums of Florida History, Inc.*, available at <https://museumoffloridahistory.com/support/membership-program/about-the-friends-of-the-museums-of-florida-history-inc/> (last visited March 11, 2021).

<sup>9</sup> Section 265.703(1), F.S.

<sup>10</sup> Section 265.703(3), F.S.

<sup>11</sup> Section 265.282, F.S.

<sup>12</sup> Section 265.283(4), F.S.

- Consulting and advising on acquisition of fine art works, appropriate use and display of state-owned art treasures for maximum public benefit, and suitability of ornamental or decorative structure or fixtures in public buildings;
- Accepting donations of money, property, art objects, and antiquities on behalf of the state;<sup>13</sup>
- Sponsoring performances and exhibits; promoting and encouraging the study and appreciation of arts and culture; and collecting, publishing, and printing pamphlets, papers, newsletters, and other materials related to arts and cultural programs available throughout the state; and
- Conducting and supporting cultural programs and cultural exchanges by coordinating with the appropriate state agencies and other organizations.<sup>14</sup>

### ***Florida Historical Resources Act***

The Florida Historical Resources Act<sup>15</sup> was established to preserve archaeological sites and objects of antiquity for the public benefit.<sup>16</sup> The Florida Historical Resources Act recognizes Florida's rich and unique heritage of historic properties as an important legacy to be valued and conserved for present and future generations. 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.<sup>17</sup>

### ***Division of Historical Resources***

The Division of Historical Resources is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The division oversees historic preservation programs to identify, evaluate, preserve, and interpret Florida's historic and cultural resources. These activities include administering the historic preservation grants programs, overseeing the National Register of Historic Places, and maintain an inventory of the state's historical resources. The division also is responsible for the state's archaeology program, which includes surveys and excavations, primarily on state-owned lands or underwater locations; and coordinates outreach programs to promote Florida's historic and traditional culture, including the State Historical Markers program and Florida Folklife program. The division director serves as the State Historic Preservation Officer, acting as the liaison with the national historic preservation program conducted by the National Park Service.<sup>18</sup>

Under the Florida Folklife Program, the division must identify, research, interpret, and present Florida folk arts, artists, performers, folklore, traditions, customs, and cultural heritage and make folk cultural resources and folklife projects available throughout the state. The division is assisted by the Florida Folklife Council, a seven member council appointed by the Secretary of

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<sup>13</sup> Such donations of money and any cash income may be received from the disposal of any donations of property, art objects, or antiquities. The donations and cash income are deposited into the Grants and Donations Trust Fund and by statutes are appropriated for use by the division for the purposes authorized in the Act. Section 265.284(3)(e), F.S.

<sup>14</sup> Section 265.284(3), F.S.

<sup>15</sup> Chapter 267, F.S.

<sup>16</sup> Section 267.14, F.S.

<sup>17</sup> Section 267.061(2)(a), F.S.

<sup>18</sup> Department of State, Division of Historical Resources, *About*, available at <https://dos.myflorida.com/historical/about/> (last visited on March 19, 2021). *See also* ch. 267, F.S.

State, in carrying out its duties under the program.<sup>19</sup> The program is funded in part by the National Endowment for the Arts.<sup>20</sup>

### ***Secretary of State – Florida’s Chief Cultural Officer***

The Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the department promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity.<sup>21</sup> The Secretary is designated as “Florida’s Chief Cultural Officer” and is encouraged to initiate and develop relationships between the state and foreign governmental officials in order to promote Florida as the center of American creativity. As Florida’s Chief Cultural Officer, the Secretary must coordinate international activities with Enterprise Florida, Inc., and any other organization the Secretary deems to be appropriate.<sup>22</sup>

### **Property Abandoned at Museums**

The Legislature has declared that the people of Florida benefit from having property of artistic, historic, cultural, or scientific value loaned to Florida museums.<sup>23</sup> However, problems arise in relation to indefinite or long term loans when museums and lenders fail to maintain contact. In response to these problems, the Legislature has established uniform procedures governing the disposition of unclaimed property<sup>24</sup> on loan to museums. The rules are designed to:

- Encourage museums and their lenders to exercise due diligence in monitoring loans;
- Allocate fairly responsibilities between lenders and borrowing museums;
- Establish procedures for lenders to preserve their interests in property loaned to museums for indefinite or long terms; and
- Resolve expeditiously the title to the unclaimed loaned property left in the custody of museums.<sup>25</sup>

Whenever property is loaned to a museum, the museum is required to:

- Make and retain a written record containing the lender’s contact information, a description of the property, a description of the property’s general condition, and the beginning and ending dates of the loan;
- Provide the lender with a signed receipt or loan agreement;
- Inform the lender of the law; and

<sup>19</sup> Sections 267.16 and 267.161, F.S.

<sup>20</sup> Department of State, *2021 Agency Legislative Bill Analysis SB 1404* (February 24, 2021) (on file with the Senate Governmental Oversight and Accountability Committee); *see also* Department of State, Division of Historical Resources, *Florida Folklife Program*, available at <https://dos.myflorida.com/historical/preservation/florida-folklife-program/> (last visited March 11, 2021).

<sup>21</sup> Section 15.18, F.S.

<sup>22</sup> *Id.*

<sup>23</sup> “Museum” is defined to mean a public or private nonprofit agency or institution located in Florida and organized on a permanent basis for primarily educational, scientific, or aesthetic purposes, which owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis. Section 265.565(2)(c), F.S.

<sup>24</sup> “Unclaimed property” is defined to mean property which is on loan to the museum and in regard to which the lender, or anyone acting legitimately on the lender’s behalf, has not contacted the museum for at least 25 years from the date of the beginning of the loan, if the loan was for an indefinite or undetermined period, or for at least 5 years after the date upon which the loan for a definite period expired. Section 265.565(2)(f), F.S.

<sup>25</sup> Section 265.565(1), F.S.

- Provide the lender with a copy of the law upon request.<sup>26</sup>

If there is a change in the lender's contact information, change in the ownership of the loaned property, or a change in the duration of the loan is negotiated, the museum must update its records to reflect the change. Whenever a museum renews or updates the records of an existing loan, the museum must inform the lender of the existence of the law and provide the lender with a copy upon the lender's request.<sup>27</sup> The museum is also required to give the lender prompt notice of any injury to or loss of property on the loan.<sup>28</sup>

The lender is responsible for notifying the museum of any change in the lender's address or change in ownership of the property. Failure to provide the required notification could result in the owner's loss of rights to the property.<sup>29</sup> Additionally, it is the responsibility of a successor of a lender to document the passage of rights of control of the property that is in the custody of a museum.<sup>30</sup>

In order to terminate a loan for unclaimed property, the museum must make a good faith and reasonable search for the identity and last known address of the lender from the museum records and other records that are reasonably available to museum staff.<sup>31</sup> If the museum is able to identify the lender and his or her last known address, the museum must provide notice of termination via certified mail. The notice of termination must include:

- The name of the lender;
- A description of the property sufficient in detail for ready identification;
- The beginning date of the loan, if known;
- The termination date of the loan, if applicable;
- The name and address of the appropriate museum official to contact regarding the loan; and
- A statement that within 90 days the lender is required to remove the property from the museum or contact the designated official in the museum to preserve the lender's interests in the property.<sup>32</sup>

If the museum is unable to acquire enough information to send a letter by certified mail, or if a signed return receipt is not received within 30 days, the museum must publish a notice of termination containing all the above required information at least twice in a publication of general circulation in the county in which the museum is located and the county of the lender's last known address. The publications must be at least 60 or more days apart.<sup>33</sup>

If the lender fails to respond to the notice of termination sent via certified mail or included in a publication of general circulation within 90 days, the title to the unclaimed property will pass to the museum.<sup>34</sup>

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<sup>26</sup> Section 265.565(3)(a), F.S.

<sup>27</sup> Section 265.565(3)(b), F.S.

<sup>28</sup> Section 265.565(3)(c), F.S.

<sup>29</sup> Section 265.565(4)(a), F.S.

<sup>30</sup> Section 265.565(4)(b), F.S.

<sup>31</sup> Section 265.565(5)(a), F.S.

<sup>32</sup> Section 265.565(5)(b), F.S.

<sup>33</sup> Section 265.565(5)(c), F.S.

<sup>34</sup> Section 265.565(6), F.S.

## National Endowment for the Arts

The National Endowment for the Arts (NEA) is an independent, federal agency with substantial discretion to award financial grants to support the arts. The NEA awards grants to groups and individuals whose artistic endeavors have substantial artistic and cultural significance or are otherwise worthy of public support and to state agencies established to serve the same purpose.<sup>35</sup> All states have a State Arts Agency recognized by the NEA. The NEA distributes program funding to those State Arts Agencies, with each state devoting its own appropriated funds to support arts programs throughout the state.<sup>36</sup> The Division of Cultural Affairs is recognized by the NEA as Florida's official State Arts Agency and receives an annual partnership grant from the NEA.<sup>37</sup>

### III. Effect of Proposed Changes:

#### Official State History Museum

**Section 1** creates s. 15.0455, F.S., to designate the Museum of Florida History, located in Tallahassee, as the official state history museum.

#### Division of Arts and Culture

**Section 2** amends s. 15.18, F.S., to designate the Secretary of State as "Florida's Chief Arts and Cultural Officer" instead of the chief cultural officer.

**Section 3** amends s. 20.10, F.S., to rename the Division of Cultural Affairs as the Division of Arts and Culture.

The bill makes several further changes to correct references to the division and to reorganize current duties of the division and the Division of Historical Resources to better align the programs with the proper division.

- **Section 4** amends s. 265.281, F.S., to correct statutory references due to changes made by the bill.
- **Sections 6, 7, and 8** amend ss. 265.286, 265.2865, and 265.701, F.S., respectively, to correct statutory references and update references to the division.
- **Sections 9, 11, 12, 13, and 14** repeal ss. 265.7025, 265.704, 265.705, 265.706, and 265.709, F.S., respectively, relating to the division's powers and duties relating to historic programs.
- **Sections 22 and 23** amend ss. 258.081 and 464.401, F.S., respectively, to make conforming changes.

<sup>35</sup> 20 U.S.C. § 954 (2018).

<sup>36</sup> Americans for the Arts, *National Endowment for the Arts – Funding for Art Agencies*, available at <https://www.americansforthearts.org/by-program/reports-and-data/legislation-policy/legislative-issue-center/national-endowment-for-the-arts%E2%80%94funding-for-arts-agencies> (last visited March 11, 2021).

<sup>37</sup> Department of State, Division of Cultural Affairs, *National Endowment for the Arts*, available at <https://dos.myflorida.com/cultural/about-us/partners/national-endowment-for-the-arts/> (last visited March 11, 2021); National Assembly of State Arts Agencies, *State Arts Agency Directory*, available at <https://nasaa-arts.org/state-arts-agencies/saa-directory/> (last visited March 11, 2021).

The bill transfers the Florida Folklife Program, and its associated council, from the Division of Historical Resources to the Division of Arts and Culture.

- **Section 20** renumbers s. 267.16, F.S., as s. 265.802, F.S., to transfer the duties and responsibilities of the Division of Historical Resources regarding the Florida Folklife Program to the Division of Arts and Culture.
- **Section 21** renumbers s. 267.161, F.S., as s. 265.803, F.S., to transfer the Florida Folklife Council from the Division of Historical Resources to the Division of Arts and Culture.<sup>38</sup>
- **Section 5** amends s. 265.283, F.S., to update references to the division and adds the definition of “folklife” to reflect the transfer of this program from the Division of Historical Resources to the Division of Arts and Culture.

### **Division of Historic Resources**

The bill transfers the Museum of Florida History from the Division of Arts and Culture to the Division of Historical Resources. **Section 17** transfers and renumbers s. 265.707, F.S., as s. 267.0721, F.S., effectively transferring administration of the Museum of Florida History and its related citizen support organization (CSO) to the Division of Historical Resources. The CSO, Friends of the Museums of Florida, Inc., will support the Museum of Florida History and other museums operated by the division.

Currently, any revenues from sales in museum stores is deposited into the Grants and Donations Trust Fund, and any funds in excess of the amount required to pay state employees may be deposited into a bank account of the museum’s CSO. In **section 17**, the bill allows the proceeds to be used to support both programs of the museums and also museum operations. Additionally, allows the division to deposit grant funding for the Museum of Florida History into the Grants and Donations Trust Fund.

**Section 10** amends s. 265.703, F.S., to delete a public record exemption for the Museum of Florida History citizen support organization no longer necessary due to changes made by the bill.

**Section 15** amends s. 267.021, F.S., to define the term “historical museum” and remove the definition of “folklife.” The term “historical museum” is defined to mean:

[A] department or a department or an agency of state or local government or a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting educational programs that are related to the historical resources of Florida.

**Section 16** amends 267.071, F.S., to require the Division of Historical Resources to encourage, promote, maintain, and operate the Museum of Florida History and other historical museums.

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<sup>38</sup> The department indicates that such reassignment of the Florida Folklife Program will bring the program in line with new federal funding program requirements from the National Endowment for the Arts. *See* Department of State, *2021 Agency Legislative Bill Analysis SB 1404* (February 24, 2021) (on file with the Senate Governmental Oversight and Accountability Committee).



The division must also establish professional standards for the preservation, exclusive of acquisition, of each of the collections under state ownership or control and to take appropriate action to foster appreciation of Florida history and culture.

**Section 18** transfers and renumbers s. 265.565, F.S., relating to property loaned to museums, as s. 267.0723, F.S. Current law requires a museum to inform a lender of the existence of the statute relating to property loaned to a museum and to provide the lender with a copy of such statutory provisions upon the lender's request. Section 18 removes the requirement for a museum to inform but maintains the requirement that upon a lender's request, a museum must provide a copy of the relevant statutory provisions.

This section amends the notice of termination provision to allow for the required information to be provided on the museum's website and specifies that publication may be by physical or online means. It also removes the requirement to publish the information twice, at least 60 days apart.

This section also provides for the disposition of abandoned property by authorizing a museum to keep, transfer, sell, or dispose of abandoned property. This section defines the term "abandoned property" to mean "property left at or delivered to a museum with no loan, deed of gift, or donation paperwork."

**Section 19** amends s. 267.115, F.S., to revise the cost or value threshold that triggers a complete inventory of objects of historical or archaeological value from \$500 to \$1,000. For objects valued or costing less than \$1,000, only a sample inventory is required.

**Section 24** amends s. 553.902, F.S., and **Section 25** amends ch. 2020-88, Laws of Florida, to make conforming changes.

#### **Effective Date**

**Section 26** provides that the bill takes effect July 1, 2021.

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

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

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

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

None.

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

None.

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

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The department may experience an indeterminate positive fiscal impact as the reassignment of the Florida Folklife Program brings the program in line with new federal funding program requirements of the National Endowment for the Arts.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 265.565, F.S., was created in 1997 by ch. 97-267, Laws of Florida. The act created an undesignated section of Florida law, which was subsequently numbered as s. 265.565, F.S. The bill transfers and renumbers this section as s. 267.0723, F.S. While the current s. 265.565, F.S., references providing a lender of property to a museum with information about a copy “of this act,” it is unlikely that “this act” means the entire chapter in which the statute is located,<sup>40</sup> but instead the act in which the statute itself was created. This ambiguity could be amended in the bill.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 15.18, 20.10, 265.281, 265.283, 265.286, 265.2865, 265.701, 265.703, 267.021, 267.071, 265.707, 265.565, 267.115, 267.16, 267.161, 258.081, 468.401, and 553.902.

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<sup>39</sup> *Id.*

<sup>40</sup> In its current location, the statute is located in the Florida Arts and Culture Act, ss. 265.281 through 265.709, F.S. Under the bill, the statute is transferred to ch. 267, F.S., which is the Florida Historical Resources Act.

This bill creates the following sections of the Florida Statutes: 15.0455, 267.0721, 267.0723, 265.802, and 265.803.

This bill repeals the following sections of the Florida Statutes: 265.7025, 265.704, 265.705, 265.706, and 265.709

**IX. Additional Information:**

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

**CS by Appropriations Subcommittee on Transportation, Tourism, and Economic Development on March 23, 2021:**

The committee substitute returns to current law, which requires proceeds from sales at museum stores as well as grant funding, gifts, and donations for the Museum of Florida History to be deposited into the Grants and Donations Trust Fund.

- B. **Amendments:**

None.