

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 909 Cultural and Historical Programs

SPONSOR(S): Infrastructure & Tourism Appropriations Subcommittee, Sirois and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1404

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 909 passed the House on April 15, 2021, and subsequently passed the Senate on April 21, 2021.

The Division of Cultural Affairs and the Division of Historical Resources within the Department of State promote programs having substantial cultural and historical significance. The Secretary of State, as head administrator of these divisions, is known as Florida's Chief Cultural Officer.

The Division of Cultural Affairs is designated as Florida's state arts administrative agency and its mission is to advance, support, and promote arts and culture in Florida. The division is tasked with the management of the Museum of Florida History, which collects, preserves, exhibits, and interprets evidence of past and present cultures in Florida, and promotes knowledge and appreciation of this heritage.

The Division of Historical Resources is responsible for carrying out the state policy regarding historical resources, including the maintenance and operation of historical museums and the administration of the Florida Folklife Program. Under the Florida Folklife Program, the division makes folk cultural resources and folklife projects available throughout the state.

The bill designates the Museum of Florida History as the official state history museum and makes several changes relating to the Division of Cultural Affairs and the Division of Historical Resources, including:

- Renaming the "Division of Cultural Affairs" to the "Division of Arts and Culture" and providing that the Secretary of State be known as "Florida's Chief Arts and Culture Officer."
- Transferring the Florida Folklife Program from the Division of Historical Resources to the newly named Division of Arts and Culture.
- Transferring the operation of the Museum of Florida History from the Division of Cultural Affairs to the Division of Historical Resources. Placing a duty on the Division of Historical Resources to establish professional standards for the preservation of the collections under state ownership.
- Transferring and revising provisions relating to property on loan to museums and property abandoned at museums.
- Revising inventory responsibilities of the Division of Historical Resources for objects of historical or archaeological value.

The bill does not appear to have a fiscal impact on state revenues or expenditures.

The bill was approved by the Governor on June 4, 2021, ch. 2021-71, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Department of State

The Division of Cultural Affairs and the Division of Historical Resources within the Department of State promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity.¹ The Secretary of State, as head administrator of these divisions, is known as Florida's Chief Cultural Officer.²

Florida Arts and Culture Act

The Florida Arts and Culture Act³ was established to provide support for, and gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums, and nonprofit organizations. The intent of the Act is to foster and ensure that arts and culture have a significant and positive effect on Florida residents.⁴

Division of Cultural Affairs

The Division of Cultural Affairs is designated as Florida's state arts administrative agency.⁵ As such, the division has direct administrative authority to oversee all of the programs authorized by the Florida Arts and Culture Act.⁶ The division's mission is to advance, support, and promote arts and culture to strengthen the economy and quality of life for all Floridians.⁷ To that end, the division is assigned various duties and responsibilities relating to the advancement of arts and culture in Florida.⁸

One such responsibility is to manage the Museum of Florida History located in Tallahassee, Florida.⁹ 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 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.¹⁰ 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.¹¹

The Friends of the Museums of Florida, Inc., is the citizen support organization created to support programs, exhibits, collections, and activities of the Museum of Florida History and the Knott House Museum.¹² A citizen support organization is defined as an organization that is:

- A not-for-profit 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;

¹ Section 15.18, F.S.

² Section 15.18, F.S.; *see also* s. 265.284(1), F.S.

³ Sections 265.281-265.709, F.S., are cited as the Florida Arts and Culture Act. Section 265.281, F.S.

⁴ Section 265.282, F.S.

⁵ Section 265.284(2), F.S.

⁶ Section 265.284(3), F.S.

⁷ Florida Department of State Division of Cultural Affairs, *Strategic Plan 2020-2025*, (August 5, 2019), <https://dos.myflorida.com/media/702139/2020-2025-strategic-plan.pdf> (last visited January 27, 2021).

⁸ *See* s. 265.284(3), F.S.

⁹ Section 265.707, F.S.

¹⁰ Department of State, *Museum of Florida History*, <https://museumoffloridahistory.com/> (last visited February 27, 2021).

¹¹ Sections 265.703 and 265.707, F.S.; Department of State, *Museum of Florida History*, <https://museumoffloridahistory.com/> (last visited February 27, 2021).

¹² Department of State, *Museum of Florida History*, <https://museumoffloridahistory.com/support/membership-program/about-the-friends-of-the-museums-of-florida-history-inc/> (last visited February 28, 2021).

- 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.¹³

The identity of donors to the citizen support organization who desire to remain anonymous are confidential and exempt from public record requirements.¹⁴

Florida Historical Resources Act

The Florida Historical Resources Act¹⁵ was established to preserve archaeological sites and objects of antiquity for the public benefit.¹⁶ The 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.¹⁷

Division of Historical Resources

The Division of Historical Resources is granted many powers and responsibilities necessary to carry out the state policy regarding historical resources.¹⁸ One such responsibility is to maintain and operate historical museums.¹⁹ With regard to historical museums, the division must promote and encourage:

- Knowledge and appreciation of Florida history by encouraging the people of the state to engage in the preservation and care of artifacts, museum items, treasure trove, and other historical properties;
- The collection, research, fabrication, exhibition, preservation, and interpretation of historical materials;
- The publicizing of the state's history through media of public information; and
- Other activities in historical and allied fields.²⁰

The Division of Historical Resources is also tasked with administering the Florida Folklife Program. Under the 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 State, in carrying out its duties under the program.²¹ The program is funded in part by the National Endowment for the Arts.²²

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.²³ 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

¹³ Section 265.703(1), F.S.

¹⁴ Section 265.703(3), F.S.

¹⁵ Sections 267.011-267.1736, F.S., are cited as the Florida Historical Resources Act. Section 267.011, F.S.

¹⁶ Section 267.14, F.S.

¹⁷ Section 267.061(2)(a), F.S.

¹⁸ See s. 267.031(5), F.S.

¹⁹ Section 267.071(2), F.S.

²⁰ Section 267.071(1), F.S.

²¹ Section 267.161, F.S.

²² Florida Department of State, Agency Analysis of 2021 HB 909 (February 24, 2021) (on file with the Government Operations Subcommittee); see also Florida Division of Historical Resources, *Florida Folklife Program*, <https://dos.myflorida.com/historical/preservation/florida-folklife-program/#:~:text=A%20component%20of%20the%20Florida,Folk%20and%20Traditional%20Arts%20Program>. (last visited February 28, 2021).

²³ 20 U.S.C. § 954 (2018).

the state.²⁴ The NEA recognizes the Division of Cultural Affairs as Florida's official State Arts Agency and receives an annual partnership grant from the NEA.²⁵

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.²⁶ 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 property²⁷ 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 loans left in the custody of museums.²⁸

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 date of the loan;
- Provide the lender with a signed receipt or loan agreement;
- Inform the lender of the Florida Arts and Culture Act;
- Provide the lender with a copy of the Florida Arts and Culture Act upon request.²⁹

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 Florida Arts and Culture Act and provide the lender with a copy upon the lender's request.³⁰ The museum is also required to give the lender prompt notice of any injury to or loss of property on the loan.³¹

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.³² 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.³³

²⁴ Americans for the Arts, *National Endowment for the Arts – Funding for Art Agencies*, <https://www.americansforthearts.org/by-program/reports-and-data/legislation-policy/legislative-issue-center/national-endowment-for-the-arts%E2%80%9494funding-for-arts-agencies#:~:text=In%20a%20striking%20example%20of,arts%20programs%20throughout%20the%20state> (last visited February 27, 2021).

²⁵ Florida Department of State, *Division of Cultural Affairs - National Endowment for the Arts*, <https://dos.myflorida.com/cultural/about-us/partners/national-endowment-for-the-arts/> (last visited February 27, 2021); National Assembly of State Arts Agencies, *State Arts Agency Directory*, <https://nasaa-arts.org/state-arts-agencies/saa-directory/> (last visited February 27, 2021).

²⁶ "Museum" is defined to mean a public or private not-for-profit 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.

²⁷ "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.

²⁸ Section 265.565(1), F.S.

²⁹ Section 265.565(3)(a), F.S.

³⁰ Section 265.565(3)(b), F.S.

³¹ Section 265.565(3)(c), F.S.

³² Section 265.565(4)(a), F.S.

³³ Section 265.565(4)(b), F.S.

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.³⁴ 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.³⁵

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.³⁶

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.³⁷

Effect of the Bill

The bill renames the "Division of Cultural Affairs" to the "Division of Arts and Culture" and provides that the Secretary of State will be known as "Florida's Chief Arts and Culture Officer" instead of "Florida's Chief Cultural Officer." These changes align the division with its mission to advance, support, and promote arts and culture.

The bill transfers the Florida Folklife Program from the Division of Historical Resources to the Division of Arts and Culture. According to the Department of State, due to a restructuring of NEA requirements, NEA folklife funds will be directed to the Division of Arts and Culture beginning with the 2021-2022 fiscal year as part of its annual State Partnership grant.³⁸

The bill designates the Museum of Florida History as the official state history museum. Additionally, the operation of the Museum of Florida History is transferred from the Division of Cultural Affairs to the Division of Historical Resources. This change brings all historical museums operated by the Department of State under a single management and supervisory structure. The bill expands the use of funds from museum store sales deposited into the Grants and Donations Trust Fund to include the support of other museums and museum stores operated by the Division of Historical Resources.

The bill adds as a duty of the Division of Historical Resources the establishment of professional standards for the preservation of the collections under state ownership and to take appropriate action as necessary, including the acquisition, protection, preservation, and interpretation of historical artifacts and resources to foster an appreciation of Florida history and culture.

³⁴ Section 265.565(5)(a), F.S.

³⁵ Section 265.565(5)(b), F.S.

³⁶ Section 265.565(5)(c), F.S.

³⁷ Section 265.565(6), F.S.

³⁸ Florida Department of State, Agency Analysis of 2021 HB 909 (February 24, 2021) (on file with the Government Operations Subcommittee).

The bill transfers and revises statutory provisions relating to property on loan to museums to the Division of Historical Resources. The bill revises notification requirements for the termination of a loan by allowing the museum to publish the notice of termination of loan on its website and in a publication of general physical or online circulation within the county the museum is located. This replaces the current requirement to publish two notifications, 60 or more days apart, in publications of general circulation in the county when the museum does not have sufficient information to send notice using certified mail.

The bill defines “abandoned property” to mean property left at or delivered to a museum with no loan, deed of gift, or donation paperwork. The bill authorizes a museum to keep, transfer, sell, or dispose of abandoned property.

The bill requires the Division of Historical Resources to keep a complete inventory of objects in its custody having a historical or archaeological value of \$1,000 or more and a sample inventory of objects with a value of less than \$1,000. Currently, the dollar threshold for these inventory requirements is \$500. The division annually performs inventory.

The bill makes other conforming and cross-reference changes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.