

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: CS/SB 1096

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Martin

SUBJECT: Monuments and Memorials

DATE: March 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limones-Borja</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1096 creates the “Historical Monuments and Memorials Protection Act.” The bill defines the term “memorial” to mean a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed, placed or located with the intent of being permanently displayed or perpetually maintained, that is dedicated to a historical person, entity, event, or series of events, and that honors or recounts the military service of any past or present military personnel or the past or present public service of a resident of the geographical area comprising this state or the United States of America. The bill defines the term “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, places in remembrance or recognition of a significant person or event in Florida History.

The bill provides that any person or entity that damages, defaces, destroys, or removes a monument or memorial located on publicly owned property may be subject to civil liability, and for which they may be required to pay treble damages and punitive damages. A person or entity authorized to alter, move, repair, or replace the monument or memorial is exempt from punitive liability.

Any public entity that owns a monument or memorial, any legal resident of this state, or any entity whose purpose is historic preservation is granted standing to bring a civil action for its damages relating to the damage, defacement, destruction, or removal of a monument or

memorial or for the willful and malicious destruction or demolition a memorial or historic property.

The bill does not prevent an agency from relocating a monument or memorial when relocation is necessary for the construction, expansion, or alternation of any publicly owned building, roads, streets, highways, or other transportation projects. However, if a monument or memorial is relocated, it must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality in which it was originally.

The bill requires any plaque, sign, picture, notice or any other object used to convey information to have written approval by the Secretary before being placed on or near a monument or memorial in existence on or before January 1, 2022.

The bill takes effect July 1, 2023.

II. Present Situation:

Memorials

The Florida Arts and Culture Act¹ (Act) recognizes the vast cultural resources available in the state and is intended to provide state support for, and gain national and international recognition of, efforts, works, and performances of Florida artists, agencies, museums, and nonprofits.² The Act designates the Secretary of State as chief cultural officer of the state, and creates the division of state arts administrative agency (Division) 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.³ The Division also sponsors and promotes performances and exhibits, conducts cultural programs and exchanges, and accept funding and support for its purposes.⁴

Criminal Penalty for Destruction of a Memorial

Section 806.135, F.S., provides that it is a second degree felony⁵ for any person to willfully and maliciously destroy or demolish any memorial or historic property, or willfully and maliciously pull down a memorial or historic property, unless authorized by the owner of the memorial or the historic property.

The term “historic property” is defined as any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. A “memorial” is defined 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; is dedicated to a historical person, an entity, an event, or a series of

¹ Sections 265.281-265.703, F.S., comprise the Florida Arts and Culture Act. *See*, s. 265.281, F.S.

² Section 265.282, F.S.

³ Section 265.284, F.S.

⁴ *Id.*

⁵ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082(9)(a)3.c. and 775.083(1)(b), F.S.

events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- 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, but not limited to, Waller Park.

Section 806.135, F.S, also requires the payment of restitution, which includes the full cost of repair or replacement of such memorial or historic property.

Standing in Litigation

For standing, Florida courts require the party prosecuting the claim to be the real party in interest or be expressly authorized by statute to bring the claim on behalf of the real party in interest. Rule 1.210 of the Florida Rules of Civil Procedure provides, in pertinent part, as follows:

(a) Parties Generally. Every action may be prosecuted in the name of the real party in interest, but . . . a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause. Persons having a united interest may be joined on the same side as plaintiffs or defendants, and anyone who refuses to join may for such reason be made a defendant.

Civil Liability and Damages

The State Constitution provides that “the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.”⁶ In most instances, the aggrieved party is limited to sue for the actual damages incurred.⁷

⁶ FLA. CONST. art. I, s. 21.

⁷ See, e.g., *Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So.3d 261, 282 (Fla. 2013).

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."⁸ "Treble damages" are 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.⁹

Punitive damages

In any civil action, no claim for punitive damages is permitted unless there is a reasonable showing by evidence in the record, or proffered by the claimant, which would provide a reasonable basis for recovery of such damages.¹⁰ A defendant may only be held liable for punitive damages if the trier of fact finds the defendant was personally guilty of intentional misconduct¹¹ or gross negligence.^{12,13} Punitive damages may not exceed the greater of:

- Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
- The sum of \$500,000.¹⁴

If the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain the court may award an amount of punitive damages not to exceed the greater of:

- Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
- The sum of \$2 million.¹⁵

If the fact finder determines that, at the time of injury, the defendant had a specific intent to harm the claimant and the defendant's conduct did in fact harm the claimant, then there shall be no cap on punitive damages.¹⁶

Monuments

Section 265.111, F.S., defines "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history.

⁸ "Civil Liability," Black's Law Dictionary 435 (9th ed. 2009).

⁹ "Treble Damages," Black's Law Dictionary 435 (9th ed. 2009).

¹⁰ Section 768.72(1), F.S.

¹¹ "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage. Section 768.72(2)(a), F.S.

¹² "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. Section 768.72(2)(b), F.S.

¹³ Section 768.72(2), F.S.

¹⁴ Section 768.72(1)(a), F.S.

¹⁵ Section 768.73(1)(b), F.S.

¹⁶ Section 768.73(1)(c), F.S.

III. Effect of Proposed Changes:

Section 1 creates the “Historical Monuments and Memorials Protection Act.”

Section 2 amends s. 265.283, F.S., to define the term “memorial” to mean a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that:

- Is constructed, placed or located with the intent of being permanently displayed or perpetually maintained;
- Is dedicated to a historical person, entity, event, or series of events; and
- Honors or recounts:
 - The military service of any past or present military personnel; or
 - The past or present public service of a resident of the geographical area comprising this state or the United States of America.

Section 2 also defines the term “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, places in remembrance or recognition of a significant person or event in Florida History.

Section 3 creates s. 265.710, F.S., to allow a civil action against a person or entity that damages, defaces, destroys, or removes a monument or memorial that is displayed on publically owned property or for willfully and maliciously destroying or demolishing a memorial or historic property. The person or entity who commits such act may be liable for three times the full cost to return, repair, or replace the monument or memorial, and may be subject to punitive damages; unless the person or entity was authorized to alter, move, repair, or replace the monument or memorial by the public entity that owns it. Although it is not specifically stated in the bill, the right to collect such damages is generally limited to a harmed party—such as the owner of the monument or memorial that is damaged or destroyed.

Section 3 also grants any public entity that owns a monument or memorial (not necessarily the monument or memorial damaged, defaced, destroyed, or removed), any legal resident of this state, or any entity whose purpose is historic preservation the right to bring a civil action for damages in the circuit court in the county in which the monument or memorial was damaged, defaced, destroyed, or removed or for any act prohibited by s. 806.135, F.S. But see VII. Related Issues below.

A person may be found guilty of a criminal and civil violation based on the same underlying facts. Therefore, a person or entity who damages, defaces, destroys, or removes a monument or memorial may be subject to both a criminal penalty and restitution pursuant to s. 806.135, F.S., and the civil penalties imposed pursuant to this bill.

Section 3 does not prevent an agency from relocating a monument or memorial when relocation is necessary for the construction, expansion, or alteration of any publicly owned building, roads, streets, highways, or other transportation projects. Section 3 requires that the monument or memorial that is relocated must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality as its original placement.

Section 3 requires any plaque, sign, picture, notice or any other object used to convey information must have written approval by the Secretary of State before being placed on or near a monument or memorial in existence on or before January 1, 2022.

Section 4 provides the bill takes effect July 1, 2023.

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 shared 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:

Lines 130 through 133 requires a monument or memorial to be relocated to certain types of locations. If the memorial or monument is owned by a private party, this requirement may infringe upon the property owner's rights of possession. This may be deemed a "taking" by the government and be subject to "just compensation."

Lines 134 through 137 require express written approval by the Secretary of State prior to a plaque, sign, picture, notice, or any other object used to convey information being placed on or near a monument or memorial in existence on or before January 1, 2022. Not all monuments and memorial are owned by governmental entities or located on public property. Thus, this requirement may infringe upon the property rights of the owner of the monument or memorial or the owner of the property upon which the monument or memorial is located.

Moreover, monuments and memorials are typically located in parks and other public places. These parks and public areas may be deemed "public forums" for free speech considerations. Thus, the requirement of the Secretary of State's approval may infringe upon a citizen's free speech rights.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State may incur workload costs associated with any requests to place a plaque, sign, picture, notice, or any other object used to convey information on or near a monument or memorial in existence on or before January 1, 2022. This increased workload should be absorbed within current agency resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 109 through 121 addresses potential litigation against persons who damage, deface, destroy or remove a monument displayed on publicly owned property. Subsection (1) (lines 109 through 115) increases the civil liability of the “bad actor” to treble damages (based on the full cost to return, repair, or replace the monument, and punitive damages). If the person is found liable for these damages, the damages appear to be payable to the owner of the monument or memorial.

Subsection (2) (lines 116 through 121) grants standing to parties other than the injured property owner. This language could be interpreted two ways. The first interpretation is that these parties are granted standing to sue on behalf of the injured property owner. This appears consistent with Rule 1.210 of the Florida Rules of Civil Procedure. If the party is successful in the suit, the damages would be payable to the injured property owner. The second interpretation is that these parties are granted standing to seek redress based on the damages to those particular parties (rather than the injured property owner). In this case, the treble and punitive damages may not apply. Given that (at least) two interpretations can be made, consideration should be given to clarifying the language so that the intended interpretation is understood.

Lines 113 through 117 makes a person or entity liable for treble damages and punitive damages for any act that damages, defaces, destroys, or removes certain monuments or memorials. This liability does not distinguish between negligent acts and intentional acts. Typically, Florida law imposes treble or punitive damages when the act is criminal, gross negligence, or performed with knowledge or intention. This bill appears to subject a negligent act to treble damages.

Lines 117 through 119 provides an exception to a party’s punitive liability if the public entity owning the monument or memorial authorized certain actions. This exception to punitive

damages suggests that even a person or entity authorized to alter, move, repair, or replace the monument or memorial may be liable for treble damages (rather than actual damages) if the person or entity (regardless of intent) damages, defaces, destroys, or removes a monument or memorial. In most instances, such damages would be addressed in a contract between the parties.

VIII. Statutes Affected:

This bill substantially amends section 265.283 of the Florida Statutes.

This bill creates section 265.710 of the Florida Statutes.

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 Governmental Oversight and Accountability on March 15, 2023:

The committee substitute defines the term “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, places in remembrance or recognition of a significant person or event in Florida History.

- B. **Amendments:**

None.