

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 395 Protection of Historical Monuments and Memorials

**SPONSOR(S):** State Affairs Committee, Black, Barnaby, and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 1122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	14 Y, 6 N, As CS	Villa	Williamson
2) Appropriations Committee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Division of Historical Resources (Division) within the Department of State is charged with protecting and preserving Florida's historic sites and properties and the Florida Historical Commission (Commission) aids and advises the Division. The Department of Veterans' Affairs (FDVA) is tasked with serving the state's veteran population.

A local government may not exercise authority in an area preempted by the state. To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.

The bill creates the "Historic Florida Monuments and Memorials Protection Act" and specifies the Legislature's intent to protect monuments and memorials from removal, damage, or destruction by preempting local government action.

The bill declares that the state occupies the whole field of removal, damage, or destruction of historic Florida monuments or memorials (monuments or memorials) to the exclusion of any existing or future local government ordinance, regulation, or rule, or any action by an elected or appointed local government official. The bill invalidates any local government measure that impinges on the Legislature's exclusive authority relating to monuments or memorials and requires the courts to issue a permanent injunction prohibiting the local government from enforcing such measure. An elected or appointed local government official that knowingly and willfully enacts or enforces such measure is subject to a \$1,000 fine. Public funds may not be used to defend or reimburse the local official.

The bill provides standing to bring a civil action to interested groups and individuals that helped construct, design, or regularly use the monument or memorial. The group or individual may be awarded actual damages, capped at \$100,000, and reasonable attorney fees and costs, for violations of the act.

The bill requires a local government that unlawfully damages, removes, or destroys a monument or memorial to return it to its original condition or location within three years. If the local government cannot afford to do so, the state must restore or relocate such monument or memorial and DOS must withhold from the local government certain funds until the local government reimburses the state for the cost of restoring or relocating the monument or memorial.

The bill authorizes a local government to temporarily remove and relocate a monument or memorial in certain instances and requires the local government to provide certain written notifications to the Division.

The bill will likely have an indeterminate fiscal impact on the state and appears to have no fiscal impact on local governments unless they act in violation of the bill's provisions. See Fiscal Analysis.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Historical Resources Act

The Florida Historical Resources Act (Resources Act)<sup>1</sup> was established to preserve archaeological sites and objects of antiquity for the public benefit.<sup>2</sup> The Resources Act recognizes Florida's historic properties as an important legacy to be cherished and preserved for current and future generations. Accordingly, it is Florida's policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state's historic environment and resources.<sup>3</sup>

##### Department of State

The Department of State (DOS) is comprised of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Arts and Culture, and Administration.<sup>4</sup> The head of DOS is the Secretary of State (Secretary). The Secretary is appointed by and serves at the pleasure of the Governor, and is confirmed by the Senate.<sup>5</sup>

##### *Division of Historical Resources*

The Division of Historical Resources (Division), one of the six divisions established within DOS,<sup>6</sup> is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.<sup>7</sup> Some of the Division's responsibilities include:

- Developing a comprehensive statewide historic preservation plan.
- Directing and conducting a comprehensive statewide survey, and maintaining an inventory, of historic resources.
- Ensuring that historic resources are duly considered at all levels of planning and development.
- Providing public information, education, and technical assistance concerning historic preservation programs.<sup>8</sup>

The Division is comprised of the Bureau of Historic Preservation,<sup>9</sup> Bureau of Historical Museums,<sup>10</sup> and Bureau of Archaeological Research.<sup>11,12</sup>

##### *Florida Historical Commission*

The Florida Historical Commission (Commission) is established within DOS to serve in an advisory capacity to the director of the Division and engages the public in the preservation and safeguarding of Florida's historic and archaeological sites and properties.<sup>13</sup> The Commission is composed of 11

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<sup>1</sup> Sections 267.011-267.22, F.S., are known as the Florida Historical Resources Act. See s. 267.011, F.S.

<sup>2</sup> Section 267.14, F.S.

<sup>3</sup> See s. 267.061(1)(a), F.S.

<sup>4</sup> Section 20.10(2), F.S.

<sup>5</sup> Section 20.10(1), F.S.

<sup>6</sup> Section 20.10(2)(b), F.S.

<sup>7</sup> See s. 267.031, F.S.

<sup>8</sup> Section 267.031(5)(a), (b), (d), and (f), F.S.

<sup>9</sup> The Bureau of Historic Preservation engages in historic preservation initiatives with the goal of identifying, evaluating, preserving, and interpreting the historical and cultural resources within the state.

<sup>10</sup> The Bureau of Historical Museums is comprised of designated museums that interpret Florida history for the public through diverse means, including object-based exhibitions, living history interactions, and guided tours.

<sup>11</sup> The Bureau of Archeological Research oversees the state's archaeology program, including underwater sites such as shipwrecks and pre-Columbian sites that are among some of the oldest human sites in the world.

<sup>12</sup> Florida Department of State, *Florida Division of Historical Resources / About*, available at <https://dos.fl.gov/historical/about/> (last visited January 23, 2024).

<sup>13</sup> Section 267.0612, F.S.

members with seven appointed by the Governor in consultation with the Secretary, two appointed by the President of the Senate, and two appointed by the Speaker of the House of Representatives. The Commission's membership must include a licensed architect with historic preservation and architectural history expertise, a professional American historian, an architectural historian, a prehistoric archaeologist, and an historic archaeologist.<sup>14</sup>

The Commission's duties include providing assistance, advice, and recommendations to the Division in the following areas:

- Establishing priorities for the identification, acquisition, protection, and preservation of historic and archaeological sites and properties.
- Formulating criteria to assess the significance of historic and archaeological sites.
- Evaluating proposals for historic preservation grants administered by the Division.
- Conducting an active outreach program to promote public understanding and engagement in the preservation of the state's historic and archaeological sites and properties.
- Identifying and expressing public goals for historic preservation and gathering public ideas necessary for the formulation of alternative policies.
- Recommending rules related to the historic preservation programs administered by the Division.
- Protecting and preserving Florida's historic and archaeological sites and properties.<sup>15</sup>

### *Florida Historical Marker Program*

The Florida Historical Marker Program is designed to raise public awareness of Florida's cultural history, encourage the preservation of historical resources, promote a sense of community among state citizens, and enhance the enjoyment and edification of tourists.<sup>16</sup> Markers may be placed on public property and on private property with permission.<sup>17</sup> These markers narrate the stories of the people and places instrumental in shaping Florida, by identifying the churches, schools, archaeological sites, battlefields, homes, highways, historic trails, and anniversaries that are significant to Florida's history and culture.<sup>18</sup>

The Division is responsible for the administration of all aspects of the Florida Historic Marker Program. This includes managing the application process; making selections and designations of properties, persons, or events to be marked; and handling the placement and maintenance of the markers.<sup>19</sup> Currently, there are approximately 1,200 markers throughout the state.<sup>20</sup>

### Memorials, Museums, and Arts and Culture

The Florida Arts and Culture Act<sup>21</sup> (Culture Act) recognizes the rich cultural resources within the state and is intended to provide state support for, and garner national and international recognition of, the efforts, works, and performances of Florida artists, agencies, museums, and nonprofits.<sup>22</sup> The Culture Act designates the Secretary of State as Florida's chief cultural officer, and creates the Division of State Arts and Culture to administer state and federal arts funding, award grants, and provide guidance on the acquisition and display of fine arts to individuals, groups, organizations, and agencies.<sup>23</sup> In addition, the Division of State Arts and Culture sponsors and promotes performances and exhibits, organizes cultural programs and exchanges, and accepts funding to further its objectives.<sup>24</sup>

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<sup>14</sup> Section 267.0612(1)(a), F.S.

<sup>15</sup> Section 267.0612(6) and (7), F.S.

<sup>16</sup> Section 267.074, F.S.

<sup>17</sup> Section 267.074(4)(a), F.S.

<sup>18</sup> Florida Department of State, Florida Division of Historical Resources, *Historical Markers*, available at <https://dos.fl.gov/historical/preservation/historical-markers/> (last visited January 23, 2024); see also s. 267.074(2), F.S.

<sup>19</sup> Rule 1A-48.003(1), F.A.C.; see also s. 267.074, F.S.

<sup>20</sup> See Florida Department of State, *Florida Historical Marker List*, available at <https://apps.flheritage.com/markers/> (last visited January 23, 2024).

<sup>21</sup> Sections 265.281-265.703, F.S., are known as the "Florida Arts and Culture Act." See, s. 265.281, F.S.

<sup>22</sup> Section 265.282, F.S.

<sup>23</sup> Section 265.284, F.S.

<sup>24</sup> *Id.*

## Florida Department of Veterans' Affairs

The Florida Department of Veterans' Affairs (FDVA) is the constitutionally chartered<sup>25</sup> state veterans' affairs department. FDVA is required to aid all former, present, and future members of the Armed Forces of the United States and their spouses and dependents in certain instances.<sup>26</sup> FDVA is headed by the Governor and Cabinet.<sup>27</sup> An executive director is appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side, and subject to Senate confirmation.<sup>28</sup>

## Criminal Penalty for Destruction of a Memorial

Willfully and maliciously destroying or demolishing any memorial or historic property,<sup>29</sup> or willfully and maliciously pulling down a memorial or historic property, unless authorized by the owner of the memorial or the historic property,<sup>30</sup> is punishable as a second-degree felony.<sup>31</sup> If convicted, the perpetrator must be ordered to pay restitution, including the full cost of repair or replacement of the memorial or historic property.<sup>32</sup>

The term "memorial" means 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 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 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.<sup>33</sup>

## Civil Action

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."<sup>34</sup> In order to bring a civil action, the claimant must be the real party in interest or be expressly authorized by statute to bring the claim on behalf of the real party in interest.<sup>35</sup> Generally, the aggrieved party can sue for actual damages incurred; however, there are situations where punitive damages or other remedies may be available depending on the nature of the case and applicable laws.<sup>36</sup> Actual damages are damages that repay actual losses. Punitive damages are damages in addition to actual damages and are intended to punish and thereby deter blameworthy conduct.<sup>37</sup>

## Attorney Fees and Costs

In Florida, a party generally may recover attorney fees only if authorized by statute or agreement of the parties. This is known as the "American Rule."<sup>38</sup> To establish the appropriate award of attorney fees, the Court is required to compute the lodestar.<sup>39</sup> The lodestar figure is determined by multiplying the hours reasonably spent on a case by the reasonable hourly rate for the services provided. This amount

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<sup>25</sup> Article IV, s. 11, FLA. CONST.

<sup>26</sup> Section 292.05(1), F.S.

<sup>27</sup> Article IV, s. 11, FLA. CONST. See also s. 20.37(1), F.S.

<sup>28</sup> Section 20.37(1), F.S.

<sup>29</sup> "Historic property" means 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. Section 806.135(1) (a), F.S.

<sup>30</sup> Section 806.135(2), F.S.

<sup>31</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 755.083, F.S.

<sup>32</sup> Section 806.135(3), F.S.

<sup>33</sup> Section 806.135(1)(b), F.S.; see also ch. 265, F.S.

<sup>34</sup> Article I, s. 21, FLA. CONST.

<sup>35</sup> Fla. R. Civ. P. 1.210(a).

<sup>36</sup> See s. 768.72, F.S.

<sup>37</sup> See "Punitive Damages," Black's Law Dictionary (11<sup>th</sup> ed. 2019).

<sup>38</sup> *Dade County v. Peña*, 664 So. 2d 959 (Fla. 1995); *Reiterer v. Monteil*, 98 So. 3d 586 (Fla. 2d DCA 2012).

<sup>39</sup> Section 57.104(2), F.S. See also *Tru Mobility, Inc., v. Briggs Auto Group, Inc.*, 2023 WL 4930277 (U.S. D.C. D. Kan. 2023).

may then be adjusted based on various factors, such as the complexity of the case or the level of success achieved.<sup>40</sup>

In addition, the prevailing party is entitled to an award of litigation costs<sup>41</sup> and other specified expenses, including expenses for posting and maintaining bonds, court reporter fees, taxes on legal services, if applicable, and expert witness fees under certain circumstances.<sup>42</sup>

### Local Government Powers

The Florida Constitution grants counties and municipalities broad “home rule” authority that did not exist prior to the ratification of the 1968 Constitution.<sup>43</sup> Non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>44</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>45</sup> Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.<sup>46</sup> A local government enactment may be inconsistent with state law if the:

- State Constitution preempts the subject area;
- Legislature preempts the subject area; or
- Local enactment conflicts with a state statute.

### Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>47</sup> To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.<sup>48</sup> Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not stated expressly. Florida courts find implied preemption when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.”<sup>49</sup>

Where state preemption applies, a local government may not exercise authority in that area.<sup>50</sup> Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the government may declare the preempted ordinance void.<sup>51</sup>

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<sup>40</sup> See *Fla. Patient's Comp. Fund. v. Rowe*, 472 So. 2d 1145 (Fla. 1985). The following factors should be taken into consideration: the time and labor required, the novelty and difficulty of the case, and the skill requisite to properly perform; the apparent likelihood that the employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar services; the results obtained; the time limitations imposed by the client or circumstances; the nature and length of the relationship with the client; the experience, reputation, and ability of the lawyer; and whether the fee is fixed or contingent.

<sup>41</sup> Section 57.041, F.S.

<sup>42</sup> Section 57.071, F.S.

<sup>43</sup> See art. VIII, s. 5, FLA. CONST. (1885) (declaring powers, duties, and compensation of county commissioners shall be prescribed by law) and art. VIII, s. 8, FLA. CONST. (1885) (“The Legislature shall... prescribe [municipal] jurisdiction and powers”). See also, *City of Trenton v. State of New Jersey*, 262 U.S. 182 (1923) (“In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state.”), *Bowden v. Ricker*, 70 Fla. 154 (Fla. 1915) (“Under the provision of section 5 of article 8 of the [1885] Constitution that powers and duties of county commissioners ‘shall be prescribed by law,’ the authority of such officials is only such as may be conferred by statutory regulations.”).

<sup>44</sup> Article VIII, s. 1(f), FLA. CONST.

<sup>45</sup> Article VIII, s. 1(g), FLA. CONST.

<sup>46</sup> Article VIII, s. 2(b), FLA. CONST.; see also s. 166.021(1), F.S.

<sup>47</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>48</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>49</sup> *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826 (Fla. 1st DCA 1996).

<sup>50</sup> See *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

<sup>51</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

### *Suspension of Ordinance*

A county or municipality must suspend enforcement of an ordinance that is legally challenged on the grounds that it is expressly preempted by the State Constitution or law, or is arbitrary or unreasonable, if:

- The action is filed within 90 days of the ordinance's adoption;
- The plaintiff requests suspension in the initial complaint; and
- The local government has been served with a copy of the complaint.<sup>52</sup>

In cases where a plaintiff appeals a final judgement declaring the ordinance valid and enforceable, the local government may enforce the ordinance 45 days after entry of the order unless the plaintiff obtains a stay of the lower court's order.<sup>53</sup>

### *Attorney Fees and Costs*

A prevailing party is entitled to attorney fees and costs<sup>54</sup> as well as damages in an action challenging a local government ordinance expressly preempted by the Florida Constitution or state law.<sup>55</sup> However, attorney fees, costs, and damages may not be awarded against a local government if:

- The local government receives written notice that an ordinance or proposed ordinance is expressly preempted; and
- Within 30 days of receiving the notice, withdraws the proposed ordinance; or, in the case of an adopted ordinance, notices an intent to repeal the ordinance within 30 days of receiving the notice and repeals the ordinance within 30 days thereafter.<sup>56</sup>

The award of attorney fees, costs, and damages under this provision is supplemental to other sanctions or remedies available under law or court rule; however, double recovery is not authorized if an affected person prevails on a claim brought against a local government pursuant to other applicable law involving the same ordinance, operative act, or transaction.<sup>57</sup>

### Legislative Immunity

The common law establishes a fundamental principle that legislators are afforded absolute immunity from liability in the performance of legislative acts.<sup>58</sup> This immunity, deeply rooted in history as a "venerable tradition," has endured since pre-colonial days.<sup>59</sup> Courts have upheld absolute immunity for legislators at all levels of government, including federal, state, and local levels.<sup>60</sup> The rationale behind this legal precedent lies in the belief that legislators, when exercising legislative powers, act in the public good and should be shielded from liability for an inadvertent misuse of such powers.<sup>61</sup> Further, courts fear that allowing personal liability could distort legislative discretion, impede the public good by interfering with the right to representation, burden frequently part-time citizen legislators, and deter service in local government.<sup>62</sup>

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<sup>52</sup> Sections 125.675(1) and 166.0411(1), F.S. The ordinance suspension provisions do not apply to ordinances enacted to implement part II of ch. 163, F.S.; s. 553.73, relating to the Florida Building Code; s. 633.202, F.S., relating to the Florida Fire Prevention Code; or laws creating, dissolving, or adjusting the boundaries of a community development district; ordinances required for compliance with a federal or state law or regulation; ordinances related to the issuance or refinancing of debt; ordinances related to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget; ordinances required to implement a contract or an agreement; ordinances related to procurement; and emergency ordinances. Sections 125.675(5) and 166.0411(5), F.S.

<sup>53</sup> Sections 125.675(2) and 166.0411(2), F.S.

<sup>54</sup> "Attorney fees and costs" means the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding. Section 57.112(1), F.S.

<sup>55</sup> Section 57.112(2), F.S.

<sup>56</sup> Section 57.112(4), F.S.

<sup>57</sup> Section 57.112(5), F.S. This provision also does not apply to ordinances relating to growth management, building codes, or fire prevention codes. Section 57.112(6), F.S.

<sup>58</sup> See *Tenney v. Brandhove*, 341 U.S. 367 (1951). Florida adopted the common law in effect as of July 4, 1776. S. 2.01, F.S.

<sup>59</sup> *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Elrod v. City of Daytona Beach*, 132 Fla. 24 (Fla. 1938); *Hough v. Amato*, 260 So. 2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (Miss. 1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930).

<sup>60</sup> *Bogan*, 523 U.S. 44.

<sup>61</sup> *Id.* at 50-51 (citing *Jones*, 55 Miss. 109).

<sup>62</sup> *Id.* at 52.

However, the freedom from personal liability does not make otherwise unlawful ordinances valid. Affected citizens have been able to challenge the validity of unlawful enactments by suing to have them declared invalid or have a court enjoin enforcement.<sup>63</sup>

In addition, courts recognize that legislators may be subject to personal liability for actions where the legislator lacks discretion.<sup>64</sup> This typically occurs when legislators are bound by an affirmative duty, such as when a law or court order has directed them to levy a tax. These acts are considered “ministerial,” as opposed to “legislative.”<sup>65</sup> An explicit and clear preemption could arguably remove discretion from local government officials seeking to engage in lawmaking within the preempted field.

## Effect of the Bill

The bill creates the “Historic Florida Monuments and Memorials Protection Act” and establishes legislative intent for the act.

The bill declares that the state occupies the whole field of removal, damage, or destruction of historic Florida monuments or memorials to the exclusion of any existing or future local government ordinance, regulation, or rule, or any action by an elected or appointed local government official. It provides that any such ordinances, regulations, rules, or actions are void. The bill defines “historic Florida monument or memorial” (monument or memorial) to mean a permanent statue, marker, plaque, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, or display constructed and located on public property which has been displayed for at least 25 years, with the intent of being permanently displayed or perpetually maintained and which is dedicated to any persons, places, or events that were important in the past or that are in remembrance or recognition of a significant person or event in state history.<sup>66</sup> It also defines “local government” to mean any municipality, county, school district, state college, state university, or other political subdivision of the state.

The bill provides that any local government or elected or appointed local government official that violates the preemption is liable. The bill requires a court to declare invalid any ordinance, regulation, or rule enacted or enforced by a local government that impinges upon the Legislature’s occupation of the whole field of removal, damage, or destruction of monuments or memorials and for the court to issue a permanent injunction against the local government prohibiting it from enforcing such ordinance, regulation, or rule. It is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.

The bill requires a court to assess a civil fine of up to \$1,000 against an elected or appointed local government official who knowingly and willfully violates the Legislature’s occupation of the whole field of removal, damage, or destruction of monuments or memorials by enacting or enforcing any local ordinance, regulation, or rule impinging upon such exclusive occupation. Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of an elected or appointed local government official found to have knowingly and willfully committed such violation.

The bill provides that the following person or organization has standing to bring a civil action for any violation of the Legislature’s occupation of the whole field of removal, damage, or destruction of monuments or memorials:

- A group involved in the design, erection, or care of the monument or memorial or a member of such a group.
- A group or person regularly using the monument or memorial for remembrance.

Such persons or organizations may sue a local government or an elected or appointed local government official in any court of this state having jurisdiction over the defendant for declaratory and

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<sup>63</sup> See, e.g., *Bogan*, 523 U.S. 44; *Lake Country Estates*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367; *Elrod*, 132 Fla. 24 (Fla. 1938).

<sup>64</sup> *Bogan*, 523 U.S. 44.

<sup>65</sup> See *Id.*

<sup>66</sup> The bill also defines “historic Florida military monument or memorial,” which is a subset monuments or memorials, to mean a monument or memorial that honors or recounts the military service of any past or present military personnel, including any armed conflict since settlers from other countries came to what is now the U.S.

injunctive relief and for actual damages, as limited, caused by the violation. The court must award the prevailing plaintiff:

- Reasonably attorney fees and costs in accordance with the laws of this state.
- The actual damages incurred, but not more than \$100,000.

If a local government removes, damages, or destroys a monument or memorial in violation of the act, the local government is liable for restoring or relocating such monument or memorial to its original condition or location, or as close as possible to the original condition or location, within three years from the date of the removal, damage, or destruction. If the local government does not have the necessary funds, the state must restore or relocate such monument or memorial and DOS must withhold from the local government all arts, cultural, and historic preservation funding until the local government reimburses the state for the cost of restoring or relocating such monument or memorial. All such funds will again be available to the local government once the state is repaid. The bill prohibits a local government from retroactively collecting any such funds from DOS that otherwise would have been received during the period that state funds were withheld.

The bill provides that a local government may only remove a monument or memorial temporarily due to military necessity or for any construction or infrastructure project. The local government proposing to remove such monument or memorial must put into an escrow account the good-faith estimate of the funds necessary to relocate the monument or memorial. A monument or memorial temporarily removed for such purpose must be temporarily relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality in which the monument or memorial was originally located.

The bill requires a local government to provide written notification to the Division, on a form prescribed by DOS in consultation with FDVA:

- Of the temporary removal of a monument or memorial. The written notification must be provided within 10 days of the local government's decision to temporarily remove the monument or memorial.
- That the military necessity has ceased or that the construction or infrastructure project is completed. The written notification must be provided within a reasonable time, but not more than 30 days, after the military necessity has ceased or the construction or infrastructure project has been completed.

The monument or memorial must be moved back to its original location or, if that is not possible, to a site with similar prominence, honor, visibility, and access within the same county or municipality as determined by DOS after consultation with the Commission or, for a military monument or memorial, FDVA.

The bill requires the Division to take any issue regarding protecting, preserving, or relocating a monument or memorial to the Commission, or in the case of a military monument or memorial, to the FDVA, for a recommendation to take action, to defer making a decision, or to not make a decision. The Division must make a written record of its decision to take action, to defer making a decision, or to not make a decision and the reasons therefor in consultation with the Commission, or in the case of a military monument or memorial, FDVA.

The bill authorizes DOS, in consultation with FDVA, to adopt rules to implement the act.

## B. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 creates s. 267.201, F.S., relating to protection of historic monuments and memorials.

Section 3 provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill could have a fiscal impact on DOS and FDVA associated with any required rulemaking, and on DOS regarding the Division's responsibilities associated with the protection, preservation, and relocation of monuments and memorials.

The state could experience costs associated with restoring or refurbishing any monument or memorial in those instances when a local government does not have the necessary funds to do so. The bill, however, requires DOS to withhold from the local government all arts, cultural, and historic preservation funding until the local government reimburses the state for the cost of restoring or relocating the monument or memorial.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

A local government that removes, damages, or destroys a monument or memorial in violation of the act and that does not have the funds available to restore or relocate the monument or memorial will no longer receive arts, cultural, and historic preservation funding until certain requirements are met.

#### 2. Expenditures:

The bill should not have a fiscal impact on local governments to the extent local governments comply with the act. However, violations of the bill may result in an indeterminate, negative fiscal impact.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill authorizes DOS, in consultation with FDVA, to adopt rules to implement the bill and requires DOS, in consultation with FDVA, to prescribe forms used to notify DOS of certain actions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 30, 2024, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS limited the effects of the bill to monuments and memorials located on public property that have been displayed for at least 25 years and applied the provisions on a prospective basis. The PCS also removed:

- A requirement to post certain meeting minutes online.
- A provision subjecting certain local officials to removal from office by the Governor.
- Certain civil penalties.
- A requirement to publicly display a specified statute.
- The severability clause.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.