

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1113 w/CS Department of State
SPONSOR(S): Detert
TIED BILLS: **IDEN./SIM. BILLS:** SB 1652 (S)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	<u>17 Y, 0 N w/CS</u>	<u>McDonald</u>	<u>Billmeier</u>
2) <u>State Administration</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
3) <u>Transportation & Econ. Dev. Apps. (Sub)</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4) <u>Appropriations</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5) <u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

SUMMARY ANALYSIS

HB 1113, with committee substitute, amends s. 20.10, F.S., to specifically provide for the Secretary of State to appoint an Assistant Secretary, a Deputy Secretary for Cultural and Historical Programs, and a Deputy Secretary for State Records. The bill renames the Division of Corporations to the Division of State Recordings to more accurately reflect the varied duties of the division. A Bureau of Central Computing Support Services is added to the Division of Administration. Direction is provided on departmental grants processes. Changes in any statutorily required duties or responsibilities are specifically prohibited without specific statutory authorization.

The bill codifies the transfer of the administration of certain international programs from the Department of State to the Office of Tourism, Trade, and Economic Development. The administration of these programs has been a current practice in the Office of Tourism, Trade, and Economic Development through a Memorandum of Agreement with the Department of State. This bill also conforms law to current practice within the Department of Education. It transfers the administration of the linkage institutes between postsecondary institutions in this state and foreign countries from the Department of State to the Department of Education.

The bill amends the requirement in s. 15.09 (4), F.S., that all funds collected by the Division of Corporations be deposited in General Revenue to require certain reinstatement fees, late fees, and penalties collected be deposited into the Cultural Institutions Trust Fund to fund cultural program grants, historic preservation grants, and historical museum grants. Additionally, the bill provides that any funds deposited that are above the amounts specified for the cultural, historic preservation, and historical museum grants will be used to fund the Cultural Endowment Program. If funds should fall below the amount specified to fund the cultural, historic preservation, and historical museum grants, the amount of funds available will be reduced proportionally.

The bill makes several technical, clarifying, and conforming changes and deletes obsolete language. The bill also revises the composition of the State Library Council, provides for a network of public archaeology centers, provides for retention of Florida Historical Commission members, and creates a citizen support organization for library, archives, and records management programs and one for cultural and arts programs.

The section of the bill relating to cultural and historical grants will reduce the amount of funding being deposited into General Revenue by an estimated \$21 million. See "Fiscal Comments."

The bill takes effect July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill provides for the establishment of two deputy secretaries in addition to an assistant secretary. Although not named in s. 20.10, F.S., the Department of State has had an assistant Secretary of State. The department has not had deputy secretaries.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND:

Governmental Structure – Executive Branch

A. General Provisions

Chapter 20, F.S., provides for the organizational structure of the executive branch of government. The chapter reiterates the doctrine of the separation of powers within state government among the legislative, executive, and judicial branches of government.¹ Section 20.02, F.S., states:

...The legislative branch has the broad purpose of determining policies and programs and reviewing program performance. The executive branch has the purpose of executing the programs and policies adopted by the Legislature and of making policy recommendations to the Legislature. The judicial branch has the purpose of determining the constitutional propriety of the policies and programs and of adjudicating any of the policies and programs and of adjudicating any conflicts arising from the interpretation or application of the laws.

A state agency, such as a department, is a creature of statute and, as such, it has only those rights and privileges given to it by the Legislature in statute.² A department is created in the executive branch and, therefore, is subject to the administrative control of an executive officer who is appointed by, and serves at the pleasure of, the Governor or a Cabinet officer. Nevertheless, the powers and duties which the department is authorized to execute are delegated by the Legislature:

An agency has only such power as expressly or by necessary implication is granted by legislative enactment. An agency may not increase its own jurisdiction and, as a creature of statute, has no common law jurisdiction or inherent power such as might reside in, for example, a court of general jurisdiction. When acting outside the scope of its delegated authority, an agency acts illegally and is subject to the jurisdiction of the courts when necessary to prevent encroachment on the rights individuals.³

¹ Article II, s. 3 of the State Constitution provides: “The powers of the state government shall be divided into legislative, executive and judicial branches. No power belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

² *Seaside Properties, Inc., v. State Road Department*, 190 So.2d 391 (3rd DCA 1966).

³ *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (5th DCA 1985).

Section 20.04, F.S., provides the structure of the executive branch of state government. The department is the principal administrative unit of the executive branch.⁴ The principal unit of the department is the division, which may be further subdivided into bureaus.⁵ A bureau may be further divided into “sections” and “subsections.” Section 20.04, F.S., specifically authorizes departments to combine these various office subdivisions for field operations.

Section 20.04(3), F.S., specifically exempts the Department of Financial Services, the Department of Children and Family Services, the Department of Corrections, the Department of Management Services, the Department of Revenue, and the Department of Transportation from the standard organizational structure for executive branch departments that is established in that subsection.

Subsection 20.04(7)(a), F.S., explicitly forbids department heads from reallocating duties and functions specifically assigned by law to a specific unit of a department, unless otherwise authorized by law. Functions or agencies assigned generally to a department without specific designation to a unit of a department may be allocated and reallocated to a unit at the discretion of the agency head.

Further, an agency head is authorized to recommend the establishment of additional divisions, bureaus, sections, and subsections, within the limitations of the organizational structure provided in ch. 20, F.S., to promote efficient and effective operation of a department.

Section 20.04(7), F.S., permits new bureaus, sections, and subsections to be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor or as established by specific statutory enactment. The subsection explicitly limits initiation of new divisions and sub-units for the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation except by specific statutory enactment.

B. Reorganization – General Provision

Section 20.02(3), F.S., contemplates the regular review of agency organizational structures to maintain agency efficiency:

Structural reorganization must be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to public needs.

Management and coordination of state services is to be improved and overlapping activities eliminated.⁶ Further, s. 20.02(4), F.S., requires departments to be organized along functional or program lines.

Structure and Responsibilities of Department of State:

The Department of State (DOS), 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 Department of State is charged with the responsibility for:

- Serving as the official custodian of records;
- Administering and enforcing the state election laws;
- Filing acts and papers of the Legislature and county ordinances;

⁴ Section 20.04(1), F.S.

⁵ Section 20.04(3), F.S.

⁶ Section 20.02(6), F.S.

- Filing all rules and regulations contained in the Florida Administrative Code and publishing and distributing proposed rules and regulations in the Florida Administrative Weekly for state agencies;
- Issuing commissions to all elected and appointed officials;
- Maintaining financial disclosures for all constitutional and state officers and specified employees;
- Qualifying all federal and state candidates;
- Serving as the ministerial filing agency that serves as the statewide repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks;
- Preserving and promoting the state's cultural heritage and programs through cultural grant programs and promotional programs and implementing programs to gain international recognition on behalf of Florida artists and arts programs;
- Protecting, preserving, and promoting Florida's historical resources through encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage;
- Administering the statewide historic preservation plan and administering historic properties of the state, either directly or through management of contracts;
- Providing library, records management, and archival services at the state and local level; and,
- Enhancing and coordinating foreign affairs and diplomacy fostering global relationships for Florida.

Division Responsibilities: Corporations, Cultural Affairs, Historical Resources, and Library and Information Services

Division of Corporations is a ministerial filing agency that serves as the statewide central repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks. The division has two bureaus: Commercial Recording and Commercial Information Services.

Division of Cultural Affairs is made up of the Office of the Director and Bureau of Grants Services. The division awards, administers, monitors, and evaluates cultural grant programs of the Department of State, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida.

Division of Historical Resources is charged with encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage. The responsibilities related to historic preservation are not only governed by state law but also by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).⁷ The division is comprised of the Director's office and three bureaus: Archaeological Research, Historical Museums, and Historic Preservation.

The division administers public information programs, the statewide historic preservation plan, the operation of historic sites and properties, and state and federal grants for historic preservation. Its duties also include the maintenance and operation of Florida's state historic museums, promotion and

⁷ The federal law requires the state to have a State Historic Preservation Officer and a comprehensive statewide historic preservation plan that is approved by the Secretary of the Interior.

administration of the Florida Folklife Program, and administration of various archaeological research and preservation programs, including a historic marker program.

The state's archaeology program, which began in the late 1960's with the enactment of laws to protect archaeological sites on state lands, is the responsibility of the Bureau of Archaeological Research. The bureau's archaeologists carry out archaeological surveys and excavations throughout the state, mostly on state-owned lands. They maintain records on historical resources that have been recorded, and assist consultants and planners in protecting sites. The state's underwater archaeology program includes not only historic shipwreck sites but also pre-Columbian sites in underwater contexts. Underwater archaeologists in the Bureau have worked with local divers to develop Underwater Archaeological Preserves around the state to protect and interpret shipwreck sites for the public.⁸

Current state law provides that it is the public policy of the state to

“preserve archaeological sites and objects of antiquity for the public benefit and to limit exploration, excavation, and collection of such matters to qualified persons and educational institutions possessing the requisite skills and purpose to add to the general store of knowledge concerning history, archaeology, and anthropology.”⁹

Finally, apart from the R.A. Gray Building where the Florida Museum of History and the division offices are housed, 63 other properties are assigned (leased) to the division to manage on behalf of the state. Five of those are directly managed by the division, two more are not maintained by the division but the division has responsibility for maintaining exhibits, and the remainder are subleased to other entities.

Division of Library and Information Services provides library, records management, and archival services at the state and local level. Structurally, the division administers these services through three bureaus: Archives and Records Management, Library and Network Services, and Library Development. The division provides direct library services to state government, management services, technical assistance, education, financial aid, and cooperative services. Working in partnership with archivists, librarians, records managers, government officials, and citizens, the division seeks to ensure access to materials and information of past, present and future value to enable state government and local libraries and agencies to provide effective information services for the benefit of Floridians.

International Programs:

International Programs are part of the listed responsibility of the Department of State; however, this is currently handled by the Governor's Office of Tourism, Trade and Economic Development (OTTED) through a memorandum of agreement (MOA). The initial MOA signed on July 22, 2002, had the Department of State retaining management responsibilities for certain programs and for the issues related to protocol. On August 20, 2002, the MOA was amended to give OTTED complete authority over the international programs and the operation of the Department of State's Office of International Affairs. The MOA required prior approval by OTTED before any action could be taken including authorization for any expenditure. Responsibilities also shifted to OTTED for consular operations, sister city/sister state programs, and any other international liaison responsibilities.

Currently, the international programs under OTTED serve to enhance and coordinate international business, foreign affairs, and diplomacy for the State of Florida. OTTED fosters global relationships, provides a support system for Florida's international activities, and encourages international economic development. OTTED's vision is to ensure that Florida remains competitive in the global economy by using all of its international resources. In addition to the programs and initiatives listed above, OTTED is also involved with linkage institutes which assist in the cost of expansion of public and private

⁸ Bureau of Archaeological Research, Department of State.

⁹ See s. 267.14, F.S.

dialogue on cooperative research and technical assistance activities, increased bilateral commerce, student and faculty exchange, cultural exchange, and the enhancement of language training skills between the postsecondary institutions in the state and those of selected foreign countries.

Grants Provided Through the Department of State:

Currently, there are three divisions that provide grants: Cultural Affairs, Historical Resources, and Library and Information Services. Of those, the first two received a dedicated source of funding for cultural program grants, historic preservation grants, and historic museum grants until FY 2003-2004.

Cultural Grants

The Division of Cultural Affairs is responsible for managing Florida's cultural grant programs. It is assisted in carrying out its duties by advisory groups. The Florida Arts Council, a 15-member advisory board, advises the Secretary of State on the distribution of grant awards. The Secretary appoints "Grant Review Panels," composed of artists, arts-related professionals and community cultural leaders, to evaluate requests for funds and make recommendations to the Florida Arts Councils. The grants can be divided into fixed capital grants, often referred to as the "list", and program grants. The fixed capital programs consist of the cultural facilities grants under s. 265.701, F.S., and the regional cultural facilities grants under s. 265.702, F.S. Another list program that is not fixed capital is the *Cultural Endowment Program*, under ss. 265.601-265.606, F.S., which provides a state match of \$240,000 to a qualifying organization \$360,000 for the establishment of an endowment, the interest from which is to be used for operation costs. Currently, 35 qualified organizations are on a waiting list for the Cultural Endowment Program. All other grants are program grants governed by ss. 265.286, 265.2861, 265.608, and 265.609, F.S. These program grants are briefly described below:

- International Cultural Exchange (s. 265.286, F.S.),¹⁰
- Challenge Grant Program (s. 265.286, F.S.),¹¹
- Statewide Arts Grants (s. 265.2861, F.S.),¹²
- Arts in Education Grant (s. 265.2861, F.S.),¹³
- State Touring Grant (s. 265.2861, F.S.),¹⁴
- Local Arts Agency/State Service Organization Grant (s. 265.2861, F.S.),¹⁵
- Cultural Institutions Program Grants (s. 265.2861, F.S.),¹⁶
- Science Museum Program (s. 265.608, F.S.)¹⁷, and
- Youth and Children's Museum Program (s. 265.609, F.S.).¹⁸

¹⁰ This grant provides assistance for international cultural exchange projects of outstanding artistic and cultural merit. Projects may originate in Florida for export or originate in another country for import by a Florida sponsor.

¹¹ This grant supports significant projects designed as a new initiative, or a program of an innovative or unique nature and is not intended for continuation programming. The grant is available to cultural institutions or groups of institutions that have local, regional, or statewide impact.

¹² Statewide Arts Grants are composed of Quarterly Assistance Grants, Underserved Arts Communities Assistance Grants, Discipline-based Arts Grants, and Individual Artist Fellowships.

¹³ This grant makes life-long learning and quality educational opportunities in the visual, performing, and literary arts available for Florida's citizens and visitors. Grants are offered under funding components such as Artists Residencies, Partnerships, and School-based Arts Education.

¹⁴ This grant brings performing arts groups to as many Florida communities as possible by providing fee support to the presenters of touring companies selected. Priority consideration is given to presenters serving small counties.

¹⁵ This grant provides general program support to assist in developing their services and programs for local communities (LAAs) or for disciplinary and special needs constituencies (SSOs).

¹⁶ These grants recognize Florida's cultural institutions that have displayed a sustained commitment to cultural excellence and have made superior cultural contributions to the state. Grants awarded consider sustained level of artistic/cultural excellence, fiscal stability, governance and management, programs and exhibitions, audience and community support, public outreach programs, and educational programs.

¹⁷ This provides support to public or private nonprofit institutions operating for the primary purpose of sponsoring, producing, and exhibiting programs for the observation and study of various types of natural science and science technology.

Historical Grants

The Florida Historical Commission performs very specific advisory duties related to historic preservation in the state and to the actions and activities of the Division of Historical Resources. The Commission is responsible for evaluating, making recommendations on, and placing in priority ranking proposals for awards of *special category historic preservation grants-in-aid* administered by the division. These are submitted to the Secretary of State for submission to the Governor and the Legislature. These particular fixed capital grants are to assist major archaeological excavations, large restoration projects at historic structures, and major museum exhibit projects involving the development and presentation of information on the history of Florida and are commonly referred to as the "list." This year there are two special category grants lists: a roll-over list of unfunded projects for FY 03-04 and a new list of projects for FY 04-05.

The Secretary of State appoints grant review panels, chaired by a member of the Florida Historical Commission, to review and rank other historic preservation grants-in-aid and historical museum grants. A description of those types of grants follows:

Historic Preservation Grants (s. 267.0617, F.S.) – The grants program consists of three sub-categories: acquisition and development, survey and planning, and community education. The program purpose is to assist and encourage the identification, excavation, protection, rehabilitation and public knowledge of historic and archaeological properties in the state. Departments or agencies of the state, universities, cities, counties, and other units of local government, not-for-profit corporations, institutions, organizations, and other non-profit entities are eligible to apply for a grant. Federal funding augments state funding provided for the grants.

Historical Museum Grants (s. 267.0619, F.S.) –The purpose of the grants program is to provide funding for development of education exhibits relating to Florida history and to assist Florida history museums with basic operational costs. There are two separate grants under the program:

- a. *General Operating Support Museum Grants* – Underwrites technical, curatorial, administrative, and educational costs associated with daily management of museum facilities. Nonprofit Florida history museums that are not agencies of the state are eligible.
- b. *Public Educational Exhibit Museum Grants* – Provides grants to support development and presentation of exhibitions through text, graphic, or audiovisual elements; artifacts; and educational components. Units of local government, departments or agencies of the state, and public or private profit or non-profit corporations, partnerships, or other organizations are eligible to apply for these grants.

Recommendations for Change in Current Funding Policy

On November 4, 2003, the Florida Arts Council, the Florida Historical Commission, and the Florida Folklife Council acting as the statutory bodies charged with the preservation, stewardship and development of Florida's arts, culture and historic resources agreed that the following should happen regarding funding:

- Reinstated a dedicated revenue source that funds the programs in Chapters 265 and 267, F.S.
- Restore arts, cultural and historical state program grant appropriations to FY 2002-2003 levels at an amount of \$18,561,742.

¹⁸ This provides support to public or private nonprofit institutions operating for the primary purpose of sponsoring, producing, and exhibiting multidisciplinary, participatory programs oriented toward visitors ages 6 months through 15 years and their families, teachers and caregivers.

- Secure funding to fund previously approved priority lists submitted by the Divisions of Cultural Affairs and Historical Resources.

At the November 18, 2003 House Commerce Committee meeting, representatives of these organizations presented their requests and rationale for the requests.

Funding Source Information – Department of State, Division of Corporations

According to the Division of Corporations, the sections of law cited in the bill as the funding source for the cultural, historic preservation, and historic museum grants do the following:

- Reinstatement fee for for-profit corporations – s. 607.0122(13), F.S.
- All fees owed by for-profit corporations upon reinstatement (such as annual report fees) – s. 607.1422(1), F.S.
- Consequences for foreign corporations transacting business in the state prior to obtaining authorization – s. 607.1502(4), F.S.
- For-profit corporations annual report late fee – s. 607.193(2)(b), F.S.
- Consequences for foreign limited liability companies transacting business in the state prior to obtaining authorization – s. 608.502, F.S.
- Reinstatement fee for not-for-profit corporations – s. 617.0122(13), F.S.
- All fees owed by not-for-profit corporations upon reinstatement – s. 617.1422(1), F.S.
- Reinstatement of not-for-profit corporations chartered by a county that failed to file for reinstatement with the Department of State in 1992, includes reinstatement fee plus annual report fees back to 1992 – s. 617.1623(1), F.S.

These reinstatement fees, late fees, and penalties have generated the following amount of revenue from July 1, 1998 to June 30, 2003:

- FY 98-99 -- \$19,506,224.10
- FY 99-00 -- \$18,925,589.42
- FY 00-01 -- \$24,449,422.80
- FY 01-02 -- \$22,604,991.98
- FY 02-03 -- \$21,205,292.84

Creating Opportunities for Quality Communities Workshops

Six regional workshops were held in August and September 2003 by the Department of State and the Department of Community Affairs to discuss the merger of the two departments and the effectiveness of the structure of the Department of State. These meetings were held, in part, in response to legislative proviso in the 2003 Appropriations Act that directed the Department of State to evaluate its programs, functions, and activities. A report was required to be prepared and submitted to the Governor and the Legislature containing current and proposed organizational overviews of the Department of State and recommending statutory and budgetary changes for achieving efficiencies in management and operation, improving service delivery to the public and ensuring compliance with federal and state laws.

An internal evaluation of the Department of State's executive management team put forward a baseline plan on an internal reorganization based on statutory functions: Custodian of State Records and Chief Cultural Officer.

At the November 18, 2003, Commerce Committee meeting, the two deputy secretaries of the Department of State presented the proposed structure for change within the Department of State. Their positions were already created by the Secretary of State; however, the structure below them needed legislative authorization and statutory change to implement.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 20.10, F.S., to specifically provide for the Secretary of State to appoint an Assistant Secretary and two deputy secretaries to serve at the pleasure of the Secretary. The two deputy directors specifically authorized by the bill are the:

- Deputy Secretary for Cultural and Historical Programs who is directly responsible to the Secretary, has oversight of the Divisions of Historical Resources and Cultural Affairs, and performs other duties as assigned by the Secretary, and
- Deputy Secretary for State Records who is directly responsible to the Secretary, has oversight of the Divisions of Library and Information Services, Elections, and Corporations, and performs other duties as assigned by the Secretary.

The bill renames the Division of Corporations as the Division of State Recordings to more accurately reflect the varied duties of the division and makes conforming changes in various sections of law. A Bureau of Central Computing Support Services is added to the Division of Administration. Direction is provided on computerizing departmental grants processes and, where appropriate, using uniform grant processes and forms. To the extent feasible, cross training grants staff is encouraged. The department is not to modify the standards or the program and grant relationships and responsibilities established in law. Changes in any statutorily required duties or responsibilities of any division or of the department are specifically prohibited without specific statutory authorization.

The bill transfers certain international programs from the Department of State to the Office of Tourism, Trade, and Economic Development (OTTED) within the Executive Office of the Governor by a type two transfer and makes conforming changes. The programs being transferred include: the provision of assistance and facilities to the Organization of American States, the state protocol officer functions, international development outreach activities in Latin America and the Caribbean Basin (FAVA/CA), the Florida Intergovernmental Relations Foundation, the Accord of the States of the Gulf of Mexico, the Florida/Korea Economic Cooperation Committee, Inc; and intergovernmental relations functions. Sections 15.17 and 15.19, F.S., relating to the provision of assistance and facilities to the Organization of American States and the performance of state protocol officer functions are repealed to conform to the transfer.

This bill also transfers the duty of administration for the linkage institutes between postsecondary institutions in this state and foreign countries from the Department of State to the Department of Education by a type two transfer and makes conforming changes.

The bill amends the requirement in s. 15.09 (4), F.S., that all funds collected by the Division of Corporations be deposited in General Revenue, to require certain reinstatement fees, late fees, and penalties collected be deposited into the Cultural Institutions Trust Fund to fund cultural program grants, historic preservation grants, and historical museum grants. Additionally, the bill provides that any funds deposited that are above the amounts specified for the cultural, historic preservation, and historical museum grants will be used to fund the Cultural Endowment Program. If funds should fall below the amount specified to fund the cultural, historic preservation, and historical museum grants, the amount of funds available will be reduced proportionally.

Specifically, the bill provides a dedicated funding source with the amount of monies to be provided to the various categories of grants as follows:

- \$2 million for the purpose of funding historic preservation grants under s. 267.0617, F.S.¹⁹
- \$1.75 million for the purpose of funding historical museum grants under s. 267.0619, F.S.²⁰

¹⁹ These historic preservation grants, matched by federal funds under the National Historic Preservation Act, fund projects that encourage the identification, excavation, protection, rehabilitation and public knowledge of historic and archaeological properties in Florida.

- \$14.3 million for the purpose of funding cultural grants under ss. 265.286, 265.2861, 265.608, and 265.609, F.S.²¹
- Any remaining funds will be used to provide state matching funds for the Cultural Endowment Program under ss. 265.601-265.606, F.S.²²

The grant review and selection process is not changed by the bill. The current process governing the cultural grants, the historical grants, and the Cultural Endowment Program can be found in Chapters 265 and 267, F.S.

The sources cited for use in funding the above are reinstatement fee for for-profit corporations; all fees owed by for-profit corporations upon reinstatement (such as annual report fees); consequences for foreign corporations transacting business in the state prior to obtaining authorization; for-profit corporations annual report late fee; consequences for foreign limited liability companies transacting business in the state prior to obtaining authorization; reinstatement fee for not-for-profit corporations; all fees owed by not-for-profit corporations upon reinstatement; and, reinstatement of not-for-profit corporations chartered by a county that failed to file for reinstatement with the Department of State in 1992, including reinstatement fee plus annual report fees back to 1992.²³

Also, in the area of responsibility for the Division of Cultural Affairs, the bill designates the division as the state arts administrative agency; requires a post audit for cultural endowment recipients; requires a recordation of a restrictive covenant for cultural facility and regional cultural facility grantees, as well as a requirement for bonds and for repayment of grant awards under certain circumstances; and, creates a citizen support organization to assist the division with its cultural and arts programs. The bill also deletes obsolete language and repeals language relating to the authority of the department to enter into indemnity agreements.

The bill amends the duties and responsibilities of the Division of Historical Resources (division) in the Department of State to further emphasize the division's role in advising and assisting governmental entities and organizations and individuals in the recognition, protection, and preservation of Florida's archaeological sites and artifacts. The language provides that this can be accomplished directly and through a memorandum of agreement with the University of West Florida to coordinate the establishment and operation of a network or regional public archaeology centers. These centers are to provide public outreach and assistance to local governments in identifying, evaluating, developing, and preserving the archaeology in their local areas and are to assist the division in its archaeological responsibilities in Chapter 267, F.S., and through the memorandum of agreement.

The bill expands the current legislative intent relating to the preservation and protection of archaeological sites and objects of antiquity to include such assistance through the establishment of a network of regional public archaeology centers.

Section 267.145, F.S., is a new section created to implement the creation of a Florida network of public archaeology centers through memorandum of agreement by the Department of State. The network is to be administered through a public archaeology center at the University of West Florida. The network is to help stem the rapid deterioration of archaeological sites and to expand public interest in archaeology. The network is to work in cooperation with the State Historic Preservation Officer and the division. Additional centers are to be located around the state at a state university with a local

²⁰ These grants provide funding for the development of education exhibits relating to the history of Florida and to assist Florida history museums with basic operational costs.

²¹ These grants provide funding for all cultural programs ranging from visual to performing arts to children's museums and youth and science museums. Education projects, touring programs, assistance to underserved arts communities, and to all communities for fostering excellence and diversity in the arts are examples of what is funded.

²² Participating organizations are assisted in generating financial resources for general operating expenses from interest earned on the \$600,000 grant principal. This is a \$600,000 matching fund endowment, with an eligible organization required to raise \$360,000 specifically for the endowment which the state will match with \$240,000, subject to legislative appropriation.

²³ Sections 607.0122(13), 607.1422(1), 607.1502(4), 607.193(2)(b), 608.502, 617.0122(13), 617.1422(1), and 617.1623(1), F.S.

archaeological program, a regional historic preservation office, the facility of a non-profit organization that does archaeology in the region, or other location set forth in the memorandum of agreement. The facility in which a center is to be located is to be provided free of charge.

Additionally, in the area of historical resources the bill revises the Florida Historical Commission to permit members to stay in office until a replacement is appointed and removes obsolete language in the areas of Folklife and Great Floridians.

In the area of library and information services, the bill designates the Division of Library and Information Services as the state library administrative agency for federal purposes; changes the size, composition, and selection process of the State Library Council; modifies the responsibilities of the State Librarian; provides definitions for the chapter governing the Division of Library and Information Services; and creates a citizen support organization to assist the division with its library, archives, and records management programs. The bill also deletes obsolete language relating to library grants.

Finally, in the area of responsibility of the Division of Corporations, two additional changes are made to delete s. 15.0913, F.S., an obsolete provision of law relating to requiring the division to be accountable for certain performance standards for Uniform Commercial Code documents and to amend s. 15.16, F.S., to remove a specific listing of chapters for which the Department of State may ask for electronic filing of records.

The bill becomes law on July 1, 2004.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.10, F.S., relating to Department of State (DOS); adding assistant secretary and two deputy secretaries; renaming Division of Corporations; adding a bureau; providing direction on grants and changes in any division or department statutory responsibilities.

Section 2. Amends s. 14.2015, F.S., relating to the Office of Tourism, Trade, and Economic Development (OTTED); revising responsibilities related to state protocol and the establishment of the regional headquarters for the Organization of American States.

Section 3. Amends s. 15.09(4)(a), F.S., relating to fees; providing an exception to the requirement that all funds collected by the Division of Corporations of DOS must be deposited in General Revenue; providing that certain reinstatement, late fees, and penalties collected be deposited in the Cultural Institutions Trust Fund of DOS for the purpose of funding certain cultural, historical museum, and historic preservation grants at specified levels; providing that any additional funds be used to fund the Cultural Endowment Program; and, finally, providing a procedure for funding specified programs if proceeds collected fall below the amounts specified for disbursement according to the legislation.

Section 4. Amends s. 15.16, F.S., relating to reproduction of records; deleting reference to specific chapters for which DOS may ask for electronic filing of records.

Section 5. Amends s. 15.182, F.S., relating to international travel by state-funded musical, cultural, or artistic organizations; transferring responsibilities from DOS to OTTED.

Section 6. Amends s. 119.092, F.S., relating to registration by federal employer's registration number; changing name of Division of Corporations.

Section 7. Amends s. 205.023, F.S., relating to report status of fictitious name registration; conforming.

Section 8. Amends s. 213.053, F.S., relating to confidentiality and information sharing; conforming.

Section 9. Amends s. 213.50, F.S., relating to corporate charters; conforming.

Section 10. Creates s. 257.015, F.S., relating to definitions; adding definitions for ch. 257, F.S.

Section 11. Amending s. 257.02, F.S., relating to the State Library Council; changing number and composition of Council; specifying groups for membership consultation; providing for officers.

Section 12. Amends s. 257.031, F.S., relating to organization of council, appointment and duties of State Librarian; deleting provisions relating to council; providing duties of State Librarian.

Section 13. Amends s. 257.12, F.S., relating to Division of Library and Information Services, authorization to accept and expend federal funds; designating the division as the state library administrative agency.

Section 14. Amends s. 257.192, F.S., relating to program grants; making a technical change.

Section 15. Amends s. 257.41, F.S., relating to library cooperatives; deleting requirement for issuance of a certificate.

Section 16. Creates s. 257.43, F.S., relating to citizen support organizations; establishing a citizen support organization for library, archives, and records management programs.

Section 17. Amends s. 265.284, F.S., relating to chief cultural officer, director of division; making technical changes; designating state arts administrative agency; deleting obsolete language.

Section 18. Amends s. 265.2865, F.S., relating to Florida Artists Hall of Fame; deleting obsolete language.

Section 19. Amends s. 265.606, F.S., relating Cultural Endowment Program; requiring a post audit.

Section 20. Amends s. 265.701, F.S., relating to cultural facilities; requiring a recordation of a restrictive covenant for cultural facility grantees; requiring bonds; providing for repayment of grant awards under certain circumstances.

Section 21. Amends s. 265.702, F.S., relating to regional cultural facilities; requiring a recordation of a restrictive covenant for regional cultural facility grantees; requiring bonds; providing for repayment of grant awards under certain circumstances.

Section 22. Creates s. 265.703, F.S., relating to citizen support organizations; establishing a citizen support organization for cultural and arts programs of the division.

Section 23. Amends s. 267.031, F.S., relating to the responsibilities and duties of Division of Historical Resources; delineating responsibilities and duties related to archaeology; providing for a network of public archaeology centers through memorandum of agreement.

Section 24. Amends s. 267.0612, F.S., relating to the Florida Historical Commission; providing for continuation of member in office until a replacement is appointed.

Section 25. Amends s. 267.0731, F.S., relating to Great Floridian Program; deleting obsolete language.

Section 26. Amends s. 267.14, F.S., relating to legislative intent on archaeological site and objects of antiquity preservation; adding establishment of network of public archaeology centers to the public policy statement.

Section 27. Creates s. 267.145, F.S., relating to network of public archaeology centers; requiring creation through memorandum of agreement; designating University of West Florida to coordinate establishment and operation of the network.

Section 28. Amends s. 267.16, F.S., relating to Florida Folklife Programs; deleting obsolete language.

Section 29. Amends s. 288.0251, F.S., relating to international outreach activities; conforming.

Section 30. Amends s. 288.809, F.S., relating to Florida Intergovernmental Relations Foundation; conforming.

Section 31. Amends s. 288.816, F.S., relating to intergovernmental relations; conforming.

Section 32. Amends s. 288.8175, F.S., relating to linkage institutes between postsecondary institutions in this state and foreign countries; changing reference to DOS to Department of Education.

Section 33. Amends s. 440.02, F.S., relating to definitions; changing name of Division of Corporations.

Section 34. Amends s. 440.05, F.S., relating to election of exemption; conforming.

Section 35. Amends s. 607.0401, F.S., relating to corporate name; conforming.

Section 36. Amends s. 607.1506, F.S., relating to corporate name of foreign corporation; conforming.

Section 37. Amends s. 617.0401, F.S., relating to corporate name; conforming.

Section 38. Amends s. 617.15j06, F.S., relating to corporate name of foreign corporation; conforming.

Section 39. Amends s. 620.103, F.S., relating to name of limited partnership; conforming.

Section 40. Amends s. 865.09, F.S., relating to definitions; conforming.

Section 41. Transfers from DOS to OTTED the following programs: the provision of assistance and facilities to the Organization of American States, state protocol officer functions, international development outreach activities in Latin America and Caribbean Basin, the Florida Intergovernmental Relations Foundation, and the intergovernmental relations functions.

Section 42. Transfers linkage institutes from DOS to the Department of Education by a type two transfer and directs that all associated trust funds remain within DOS.

Section 43. Provides for repeals.

Section 44. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

For FY 04-05, the estimated fiscal impact on General Revenue is (\$21) million in recurring revenues.

2. Expenditures:

For the provisions relating to the transfer of the international programs to OTTED, which are the same as the provisions passed by the House of Representatives in HB 1855, three positions and \$397,208 in general revenue funds will be transferred from the Department of State to the Office of Tourism, Trade, and Economic Development to administer the programs and responsibilities relating to international activities. Also being transferred is \$1,150,000 in international business grants from General Revenue Fund, as recommended in House Bill 1835, for Fiscal Year 2004-2005.

For FY 04-05, the recurring expenditures for the provisions relating to the cultural and historical grants are estimated to be as follows:

Cultural Grants	\$14.30M
Historic Preservation Grants	\$ 2.00M
Historical Museum Grants	\$ 1.75M
Cultural Endowment	<u>\$ 2.95M</u>
TOTAL	\$21.00M

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be a positive economic impact on the private sector, both the arts, museum, and historical recipients and potential recipients of grants and the businesses that could be impacted by increased visitation to and participation in cultural and historical programs.

D. FISCAL COMMENTS:

According to the House Appropriations Committee, the provisions related to the transfer of international programs appears to have no fiscal impact since it merely transfers the budget related to international activities from the Department of State to the Office of Tourism, Trade and Economic Development.

The estimates provided above for the cultural and historical grants were provided by the Department of State. The actual total dollar amount could be slightly more or less than the \$21 million projected.

Over the last five years funds collected from the specified categories have been as follows:

\$19,506,224.10 in FY 98-99; \$18,925,589.42 in FY 99-00; \$24,449,422.80 in FY 2000-01;

\$22,604,991.98 in FY 01-02; and \$21,205,292.84 in FY 02-03. Additionally, the Department of State indicated that the provision of a dedicated source of funding could potentially result in an administrative cost savings by providing the department with the ability to implement multiyear review processes and reduce the travel and related administrative costs of the various review panels used in the

determination of grant eligibility and award. The provision of a dedicated source of revenue as provided by the bill will have a potential positive fiscal impact on local governments. Many local governments receive funding through the cultural and historical program grants to be funded through the bill for local cultural programs, museums, and historical programs. The impact would be potentially positive on the amount of money the local governments will save in expenditure or will be able to be multiple the impact of any future expenditure made because of the availability of grants.

The Department of State has stated that there is no fiscal impact for the remaining provisions of the bill. There is no indication as to what, if any costs, would be incurred by the change in the name of the Division of Corporations regarding letterhead or other expenses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require municipalities or counties to expend funds, does not reduce their authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 31, 2004, the Committee on Commerce adopted a strike all amend and passed the bill as favorable with a committee substitute. The committee substitute differs from the original bill in the following ways:

- Structural changes to the Department of State are as follows:
 1. Authorizes the Secretary of State to appoint an Assistant Secretary of State, a Deputy Secretary for Cultural and Historical Programs, and a Deputy Secretary for State Records.
 2. Provides that the Deputy Secretaries are directly responsible to the Secretary, have oversight responsibilities for certain divisions, and shall perform other duties as assigned by the Secretary.
 3. Changes the name of the Division of Corporations to the Division of State Recordings to better reflect the varied duties and responsibilities of the division. Changes no other names.
 4. Creates a Bureau of Central Computing Support Services under the Division of Administration.
 5. Provides direction on computerizing departmental grants processes; where appropriate, using uniform grant processes and forms; and, to the extent feasible, cross training grants staff.
 6. Prohibits the department from modifying the standards or the program and grant relationships and responsibilities established in law.
 7. Prohibits changes in any statutorily required duties or responsibilities of any division or of the department without specific statutory authorization.

8. Transfers international programs to OTTED and linkage programs to the Department of Education.

- State Library Council is modified in size, composition, and selection requirements.
- State Librarian responsibilities are modified.
- Definitions for Chapter 257, F.S., are modified.
- A citizen support organization is created for library, archive and records management programs.
- Division of Cultural Affairs is designated as the state arts administrative agency.
- A citizen support organization is created for cultural and arts programs.
- Cultural Endowment Program requirements are changed to include a post audit.
- Cultural facility and regional cultural facility requirements are changed to require a recordation of a restrictive covenant for grantees, require bonding, and provide for repayment of grant awards under certain circumstances.
- Funding for cultural and historical grants through a dedicated source is added.
- Provisions for the establishment of a network of public archaeology centers are added.
- Provides for the continuation of a member of the Florida Historical Commission until a replacement is appointed.
- Makes technical and conforming changes and deletes obsolete language.