

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 Military Affairs, Space, and Domestic Security Committee

BILL: SB 1632

INTRODUCER: Senator Dean

SUBJECT: 40th Anniversary/End of the United States' Involvement in the Vietnam War

DATE: January 31, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming/Willar	Carter	MS	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill designates March 25, 2013, the 40th anniversary of the end of the United States' involvement in the Vietnam War, as a legal holiday to provide opportunities for the public and veteran organizations throughout the state to express appreciation for the honorable service and sacrifice of veterans who served in the U.S. Armed Forces during the Vietnam Era. The bill also establishes the Vietnam War Commemoration Fund and creates a veteran volunteer advisory board to fund and manage the Vietnam War commemoration activities on March 25, 2013.

The bill also directs the Department of Highway Safety and Motor Vehicles to develop a "Vietnam Veterans" specialty license plate and specifies the distribution of the annual use fees generated from the license plate.

The bill creates the following sections of the Florida Statutes: 683.025 and 292.075, and substantially amends the following sections of the Florida Statutes: 320.08056, 320.08058, and 683.01.

II. Present Situation:

Legal Holidays and Special Observance Days

Chapter 683, F.S., establishes legal holidays and special observance days. Legal holidays and special observance days may apply throughout the state or they may be limited to particular counties. For example, "Gasparilla Day"¹ is a legal holiday observed only in Hillsborough

¹ Section 683.08, F.S.

County, while “Bill of Rights Day,”² if issued by the Governor, is observed throughout the state. Also, designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees. Section 110.117, F.S., establishes which legal holidays are paid holidays for public employees.³

The legal holidays established in s. 683.01(1), F.S., are:

- (a) Sunday, the first day of each week.⁴
- (b) New Year’s Day, January 1.
- (c) Birthday of Martin Luther King, Jr., January 15.
- (d) Birthday of Robert E. Lee, January 19.
- (e) Lincoln’s Birthday, February 12.
- (f) Susan B. Anthony’s Birthday, February 15.
- (g) Washington’s Birthday, the third Monday in February.
- (h) Good Friday.
- (i) Pascua Florida Day, April 2.⁵
- (j) Confederate Memorial Day, April 26.
- (k) Memorial Day, the last Monday in May.
- (l) Birthday of Jefferson Davis, June 3.
- (m) Flag Day, June 14.
- (n) Independence Day, July 4.
- (o) Labor Day, the first Monday in September.
- (p) Columbus Day and Farmers’ Day, the second Monday in October.
- (q) Veterans’ Day, November 11.

United States Involvement in the Vietnam War

The Geneva Accords dividing Vietnam into a communist north and democratic south were signed in July of 1954. The rationale developed by the Eisenhower Administration to explain its economic and military support of South Vietnam became known as the “domino theory.” Likening the countries of southeast Asia to a row of dominos, the President argued that if one country fell, it would trigger the fall of others.⁶ Thus, the United States began to endorse and support South Vietnam’s effort to defend against the communist North.

The U.S. initially supported South Vietnam in an advisory role but, by the mid-1960s, U.S. military forces were directly involved in combat operations against the North, in which over the course of the war, more than 3 million Americans were deployed to Southeast Asia.⁷ American

² Section 683.25, F.S.

³ Section 110.117(1), F.S., provides the following holidays as paid holidays for all state branches and agencies: New Year’s Day; Martin Luther King Birthday; Memorial Day; Independence Day; Labor Day; Veteran’s Day; Thanksgiving Day and Friday after Thanksgiving; and Christmas Day.

⁴ Sunday as a holiday has its origins in the Christian Sabbath or day of rest.

⁵ “Pascua Florida” is a Spanish term that means *flowery festival* or *feast of flowers*. It usually refers to the Easter season, though, “Pascua” can, depending on the context, refer to the Jewish Passover, Easter, Christmas, Epiphany or Pentecost. *See*, <http://www.answers.com/topic/pascua-florida>. April 2 each year is designated as “Florida State Day” and is known as “Pascua Florida Day.” Juan Ponce de León called the land he encountered in 1513 “Pascua florida.” The holiday is to be observed in the same manner as a “patriotic occasion.”

⁶ The War in Vietnam, 1954-1964; <http://faculty.smu.edu/dsimon/Change-Viet.html>.

⁷ *Statistics at a Glance*, Dep’t of Veterans Affairs (as of 1/17/2012) and *America’s Wars*, Dep’t of Veterans Affairs (May 2010) available at: http://www1.va.gov/opa/publications/factsheets/fs_americas_wars.pdf

involvement in the war began to decline after the Paris Peace Accords were signed on January 27, 1973. The U.S. completed withdrawal of its ground troops from Vietnam on March 30, 1973, but thousands of U.S. support personnel remained in Vietnam. All remaining U.S. personnel were evacuated when Saigon fell on April 30, 1975.⁸

Military involvement in Vietnam, and the neighboring countries of Laos and Cambodia, resulted in the deaths of 58,220 U.S. service members, 1,952 of whom were from Florida.⁹ An additional 153,303 U.S. service members required hospital care as a result of wounds.¹⁰ There are approximately 7.5 million surviving veterans of the Vietnam War era, with approximately 454,000 residing in Florida.¹¹

The United States supported South Vietnam from the beginning of the war until its end on May 7, 1975. The U.S. Congress and President have defined the Vietnam era as beginning February 28, 1961, and ending on May 7, 1975.¹² This is the period used to determine qualification for veterans' benefits. The Vietnam Veterans Association likewise uses this period to determine eligibility for membership.¹³

Specialty License Plates

The Florida Legislature created the first specialty license plate in 1986. Specialty license plates are available for an annual use fee to any owner or lessee of a motor vehicle. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to a specified organization in support of the particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Section 320.08053, F.S., provides that an organization seeking authorization to establish a specialty license plate must submit the following:

- A request for the particular license plate with a description of the proposed plate in specific terms, including a sample plate conforming to the specifications set by the Department of Highway Safety and Motor Vehicles (DHSMV);
- An application fee, not to exceed \$60,000, to defray the DHSMV's cost for reviewing the application and developing the specialty license plate, if authorized; and
- A marketing strategy outlining both the short and long term marketing plans, and a financial analysis outlining the anticipated revenue and the planned expenditures of the revenue from the requested specialty license plate.¹⁴

⁸ U.S. Congress, President, and Florida Legislature recognize May 7, 1975, as the end of the Vietnam War (for purpose of veteran affairs). Text at: <http://www.gpo.gov/fdsys/pkg/CFR-2005-title45-vol3/pdf/CFR-2005-title45-vol3-sec506-10.pdf>; 14 Fla. Prac., Elder Law § 14:5 (2010-11 ed.).

⁹ <http://thewall-usa.com/summary.asp>

¹⁰ Anne Leland; Mari-Jana "M-J" Oboroceanu, American War and Military Operations: Casualties: Lists and Statistics, Congressional Research Service, <http://www.fas.org/sgp/crs/natsec/RL32492.pdf> (February 26, 2010); <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm>

¹¹ Florida Dep't of Veterans' Affairs, *Fast Facts*, Available at: <http://www.floridavets.org/>.

¹² U.S. Code of Federal Regulations, Title 45, Volume 3, Sec. 506.10, "Vietnam Conflict" defined, available at <http://frwebgate2.access.gpo.gov/cgi-bin/TEXTgate.cgi?WAISdocID=xr1v3B/30/1/0&WAISaction=retrieve>

¹³ Vietnam Veterans Association, *Membership Brochure*, http://www.vva.org/member_brochure.html

¹⁴ Section 320.08053, F.S., was found to be unconstitutional by U.S. District Judge John Antoon, II, on March 30, 2011, and is thus, void. See Section III of this analysis for more information.

The required documentation and fees must be submitted at least 90 days before the convening of the next regular session of the Florida Legislature. If a specialty license plate is approved by law, the organization must submit a proposed art design for the specialty plate to the DHSMV no later than 60 days after the act becomes a law. If the specialty license plate is not approved by the Legislature, the application fee is refunded to the requesting organization.

In 2010, the Legislature amended s. 320.08053, F.S., to establish presale requirements for specialty license plates that have been approved by the Legislature. Section 320.08053(3), F.S., requires the DHSMV to establish a method to issue a specialty license plate voucher to allow for the presale of an approved specialty license plate, within 120 days following the specialty license plate becoming law. Within 24 months after the presale specialty license plate voucher is established, the approved specialty license plate organization must record with the DHSMV at least 1,000 voucher sales before manufacture of the license plate may commence. If the minimum sales requirements have not been met after the 24-month presale period, the specialty license plate is deauthorized and the DHSMV must discontinue development of the plate and discontinue issuance of the presale vouchers.

In 2008, the Legislature passed SB 1992 (ch. 2008-176, Laws of Florida), which established a moratorium on the issuance of specialty plates by the DHSMV. The 2010 Legislature created chapter 2010-223, Laws of Florida, to extend the moratorium to July 1, 2014. The moratorium contains an exception “for [any] specialty license plate proposal which has submitted a letter of intent to the DHSMV prior to May 2, 2008” or “which was included in a bill filed during the 2008 Legislative Session.”¹⁵

Section 320.08058, F.S., lists the approved specialty license plates and specifies funding requirements.

III. Effect of Proposed Changes:

Section 1 amends s. 683.01 F.S., designating March 25, 2013, the 40th anniversary of the end of the United States’ involvement in the Vietnam War, as a legal holiday.

Section 2 creates s. 683.025 F.S., designating March 25, 2013, as the date the 40th anniversary of the end of the United States’ involvement in the Vietnam War is to be commemorated. It further provides that this day shall be suitably observed by public exercises in the State Capitol and elsewhere as the Governor designates and provide opportunities for the public to demonstrate and express appreciation for the honorable service and sacrifice of veterans who served in the U.S. Armed Forces during the Vietnam Era.

Section 3 creates s. 292.075 F.S., to direct the Department of Veterans’ Affairs to collaborate with Florida’s veteran organizations and their local posts and chapters to administratively promote and support the efforts of counties, municipalities, and veteran organizations that voluntarily hold special community events commemorating the 40th anniversary of the end of the United States’ involvement in the Vietnam War.

¹⁵ Section 21, ch. 2010-223, L.O.F.

Additionally, the bill establishes a separate account within the Operations and Maintenance Trust Fund of the Department of Veterans' Affairs designated as the Vietnam War Commemoration Fund for the purposes of receiving donations through June 30, 2013, to fund grants to counties, municipalities and other organizations that hold commemorative activities. Any unused funds from after June 30, 2013 in the account will be transferred to the Operations and Maintenance Trust Fund of the Department of Veterans' Affairs.

The bill also creates a special volunteer advisory board, consisting of Vietnam veterans of the state, for the purpose of reviewing and making recommendation for the Vietnam War commemoration activities on March 25, 2013.

Section 4 amends s. 320.08056, F.S., adding the "Vietnam Veterans" license plate to the list of approved specialty license plates available in Florida and establishes an annual use fee of \$25 to acquire such license plate.

Section 5 amends s. 320.08058, F.S, directing the DHSMV to develop a "Vietnam Veterans" specialty license plate and specifies the distribution of the generated annual use fees from the license plate.

The license plate annual use fees generated through June 30, 2013 are to be deposited into a separate account within the Florida Department of Veterans' Affairs' Operations and Maintenance Trust Fund designated as the Vietnam War Commemoration Fund. All such moneys are to be administered by the Florida Veterans' Foundation,¹⁶ and must be used solely for the purpose of:

- Funding grants to counties, municipalities, and bona fide veterans' organizations for activities on March 25, 2013 in commemoration of the 40th anniversary of the end of the United States' involvement in the Vietnam War; and
- The promotion and marketing of the license plate.

Section 6 provides an effective date of July 1, 2012.

Other Potential Implications:

The provisions in this bill creating a Vietnam Veterans specialty license plate are in violation of the moratorium established by ch. 2008-176, Laws of Florida, on the issuance of specialty plates by the DHSMV. The sponsoring organization for the Vietnam Veterans license plate has not met the requirements that would exempt them from the moratorium.

Additionally, on March 30, 2011, United States District Judge John Antoon, II, issued an order that found s. 320.08053, F.S., (2009) unconstitutional under the overbreadth doctrine. His ruling was based on the finding that s. 320.08053, F.S., (2009) "implicates private speech rights and provides the Legislature with unfettered discretion to engage in viewpoint discrimination when declining to approve a specialty license plate application."¹⁷ Section 320.08053, F.S., prescribes

¹⁶ The Florida Veterans' Foundation is the direct-support organization of the Florida Department of Veterans' Affairs created under s. 292.055, F.S.

¹⁷ *Sons of the Confederate Veterans, Florida Division, Inc. v. Jeffrey H. Atwater, et al.*, No. 6:09cv-134-Orl-28KRS (M.D. Fl. Mar. 30, 2011)

the requirements an organization must follow in order to obtain a specialty license plate. In light of this ruling, the requirements for successful completion of an application to DHSMV for a specialty license plate are void. However, according to the DHSMV, s. 320.08053(3), F.S., which was amended in 2010 to establish a presale license plate process, does not appear to be impacted by Judge Antoon's ruling. Therefore, a sponsoring organization for a specialty license plate must satisfy the presale conditions set forth in s. 320.08053(3), F.S.

Finally, the bill provides that the annual use fees generated through June 30, 2013 are to be deposited in the designated Vietnam War Commemoration Fund to fund the Vietnam War commemoration activities. The presale requirements in s. 320.08053(3), F.S., require the approved specialty license plate organization to record with the DHSMV at least 1,000 voucher sales within a 24-month period before manufacture of the license plate may commence. The sponsoring organization of the Vietnam Veterans license plate would need to pre-sell 1,000 vouchers before the DHSMV will manufacture and distribute the license plates and release the funds generated.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons choosing to purchase a "Vietnam Veterans" specialty license plate can do so for a charge of \$25 (plus \$5 processing fee) in addition to the normal fees associated with buying a license plate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
