

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 493 State Parks
SPONSOR(S): Baxley
TIED BILLS: None **IDEN./SIM. BILLS:** SB 672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	7 Y, 6 N, As CS	Kaiser	Blalock
2) Government Operations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Under current law, it is the duty of the Division of Recreation and Parks (division) of the Department of Environmental Protection (DEP) to supervise, administer, regulate, and control the operation of all public parks, including:

- Monuments,
- Memorials,
- Sites of historic interest and value, and
- Sites of archaeological interest and value.

In addition, current law authorizes the division, in cooperation with the Division of Historical Resources (DHR) of the Department of State, to select and designate, within the state park system, sites of historic interest and value and to erect and maintain appropriate signs or markers indicating these sites. However, where a citizen or group of citizens disagrees with the division on the establishment or placement of a historical monument, the current process does not afford citizens the ability to seek recourse from an elected official or body.

Current law also provides that all lands held in the name of the Board of Trustees of the Internal Improvement Trust Fund (board) are held in trust for the use and benefit of the people of the state pursuant to Art. II, s. 7 and Art. X, s. 11, of the Florida Constitution. The board is comprised of the Governor and Cabinet and is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state. The Division of State Lands (division) within the Department of Environmental Protection (DEP) performs the staff duties related to the board's authority over state lands.

The bill requires the division to publish notice of the division's decision to erect a historical monument at a site of historic interest and value. The public notice must be published for one week in a newspaper of general circulation within the county or counties where the historical site is located. If there is no newspaper of general circulation within such county/counties, the division must post a notice at each entrance to the site of historical interest where the proposed historical monument is to be erected. DEP is authorized to adopt rules specifying the content of the public notice.

The bill defines "historical monument" to mean a permanent structure erected to commemorate a person or important event of historical significance to the state, a region of the state, or a local community.

The bill also provides for an appeal process to the board. Within 30 days from the date the public notice appears in a newspaper or is posted, any person may submit a request in writing to the asking the board to review the division's decision to erect a historical monument. If the board receives such a request within the 30-day period, the board must act on the request within 90 days of receiving the first request at a regularly scheduled meeting of the board. The board may only approve such a decision by the division upon a majority vote of the members of the board.

The bill does not appear to have a fiscal impact on local or state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Under current law,¹ it is the duty of the Division of Recreation and Parks (division) of the Department of Environmental Protection (DEP) to supervise, administer, regulate, and control the operation of all public parks, including:

- Monuments,
- Memorials,
- Sites of historic interest and value, and
- Sites of archaeological interest and value.

In addition, current law² authorizes the division, in cooperation with the Division of Historical Resources (DHR) of the Department of State, to select and designate, within the state park system, sites of historic interest and value and to erect and maintain appropriate signs or markers indicating these sites.

When presented with a proposal to place a monument in a state park, the division:³

- Evaluates the compatibility of the proposed monument with the park's goals.
- Evaluates the proposal in relation to other designations, such as a listing on the National Register of Historic Places, in consultation with DHR.
- Evaluates the proposal for consistency with the park's approved unit management plan. (State land management plans are required by ss. 253.034 and 259.032, F.S., and define the areas of the park that will be developed. The plans also provide guidance for the division's management activities for natural, cultural, recreational and interpretive resources. Plans are reviewed at public workshops, with appointed stakeholder advisory groups, by the Acquisition and Restoration Council and are approved by the Board of Trustees of the Internal Improvement Trust Fund.)
- Evaluates the initial and long term costs associated with the proposal such as installation, maintenance, and grounds keeping.
- Evaluates the proposed design and location to determine whether the proposed installation would be appropriate to the character of the historic site, protect valuable views, would not obstruct visitor use or access and generally fits with the physical setting of the park.

However, where a citizen or group of citizens disagrees with the division on the establishment or placement of a historical monument, the current process does not afford citizens the ability to seek recourse from an elected official or body.

According to DEP, between February 13, 2013 and January 14, 2014, a total of 337 requests for placement of monuments, plaques and memorials within Florida State Parks were received. One request was of national significance, two of state significance, 17 of regional significance and 317 of local significance. In all, fifty of the 171 units of the park system received requests.

Section 253.001, F.S., provides that all lands held in the name of the Board of Trustees of the Internal Improvement Trust Fund (board) are held in trust for the use and benefit of the people of the state pursuant to Art. II, s. 7 and Art. X, s. 11, of the Florida Constitution. The board is comprised of the Governor and Cabinet and is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state. The Division of State Lands (division) within the Department of Environmental Protection (DEP) performs the staff

¹ Section 258.004(1), F.S.

² Section 258.007(5)(a), F.S.

³ Email received from DEP on January 29, 2014 (On file with the House Agriculture Committee).

duties related to the board's authority over state lands. The Division of State Lands (division) within the Department of Environmental Protection (DEP) performs the staff duties related to the board's authority over state lands.

Effect of Proposed Changes

The bill amends s. 258.007(5)(a), F.S., requiring the division to publish notice of the division's decision to erect a historical monument at a site of historic interest and value. The public notice must be published for one week in a newspaper of general circulation within the county or counties where the historical site is located. If there is no newspaper of general circulation within such county/counties, the division must post a notice at each entrance to the site of historical interest where the proposed historical monument is to be erected. DEP is authorized to adopt rules specifying the content of the public notice.

The bill defines "historical monument" to mean a permanent structure erected to commemorate a person or important event of historical significance to the state, a region of the state, or a local community.

The bill also provides for an appeal process to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees). Within 30 days from the date the public notice appears in a newspaper or is posted, any person may submit a request in writing to the Board of Trustees asking the board to review the division's decision to erect a historical monument. If the Board of Trustees receives such a request within the 30-day period, the board must act on the request within 90 days of receiving the first request at a regularly scheduled meeting of the board. The Board of Trustees may only approve such a decision by the division upon a majority vote of the members of the board.

B. SECTION DIRECTORY:

Section 1: Amends s. 258.007, F.S., authorizing historical monuments to be erected and maintained with the state park system; requiring approval by the Board of Trustees of the Internal Improvement Trust Fund for such monuments, if requested by the public.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Under the bill, the Board of Trustees of the Internal Improvement Trust Fund (board) must provide express approval before the division can erect or maintain historical monuments in a state park. A decision by the board to approve or disapprove a request for a monument could implicate the freedom of speech protections afforded in the U.S.⁴ and Florida⁵ Constitution. On occasion, support groups representing a historical site or event will raise money and petition the division to allow a monument or marker to be placed at the historic site located in a state park. If the board approves one groups' marker or monument, it may become difficult to reject a similar request by other groups to install a monument that represents their specific interests. If the board rejects one group's request for a monument after approving another group's similar request, the board may be subject to lawsuits claiming that the board violated the group's freedom of speech protections.

Article I, Section 4, of the Florida Constitution provides that:

Every person may speak, write, and publish sentiments on all subjects, but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation, the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.⁶

The First Amendment of the U.S. Constitution prohibits Congress from making any law abridging the freedom of speech or of the press.⁷ The Fourteenth Amendment⁸ makes the First Amendment applicable to the states. The protections afforded by the freedom of speech and press provision of the Florida Constitution⁹ are at least as broad as that provided by the First Amendment of the United States Constitution.¹⁰ Accordingly, the scope of the Florida Constitution's protection of freedom of speech is the same as required under the First Amendment.¹¹

The First Amendment generally prohibits the government from enacting laws that abridge the freedom of speech because of disapproval of its content.¹² A law or regulation challenged on free speech grounds is termed "content based" when the government adopts it as a regulation on speech because of disagreement with the message the speech conveys,¹³ and it is termed "content neutral" if it is justified without reference to the content of the regulated speech.¹⁴ The principal inquiry in determining whether a restriction on free speech is content-based or content-neutral is simply

⁴ U.S. Const. Amend. I.

⁵ Article I, Section 4, Florida Constitution.

⁶ *Id.*

⁷ U.S. Const. Amend. I.

⁸ U.S. Const. Amend. XIV.

⁹ Article I, Section 4, Florida Constitution.

¹⁰ *State v. Globe Communications Corp.*, 648 So. 2d 110 (1994).

¹¹ *Department of Educ. v. Lewis*, 416 So. 2d 455 (1982).

¹² *Rodriguez v. State*, 920 So. 2d 624 (2005).

¹³ *State v. O'Daniels*, 911 So. 2d 247 (Fla. Dist. Ct. App. 3d Dist. 2005).

¹⁴ *Ward v. Rock Against Racism*, 491 U.S. 781, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989).

whether the government has adopted the restriction because of its disagreement with the message that the speech conveys.¹⁵ The courts must look to the purpose behind the regulation,¹⁶ and the state cannot suppress speech if the real rationale for the restriction is disagreement with the underlying ideology or perspective that the speech expresses.¹⁷ Content-based regulations are presumptively invalid.¹⁸ If a governmental regulation is based on the content of the speech, then the courts will apply a strict scrutiny test requiring the government to show that its action is narrowly tailored and serves a compelling state interest,¹⁹ and, if a less restrictive alternative would serve the government's purpose, then the legislature must use that alternative.²⁰

If the government action is content neutral, courts apply a time, place, and manner analysis rather than a strict scrutiny test.²¹ In determining the validity of such time, place and manner restrictions, the courts must apply intermediate scrutiny as its standard of review, and determine whether the ordinance was narrowly tailored to achieve a significant government interest and left open ample alternative channels of communication.²² Content-neutral time and place restrictions that incidentally impact First Amendment rights enjoy the presumption of constitutionality.²³ A law challenged on free speech grounds is not content based merely because it has an incidental effect on some speakers or messages but not others.²⁴

In addition, the government has the power to preserve the property under its control for the use to which it is lawfully dedicated.²⁵ The courts use a "forum" analysis as a means of determining when the government's interest in limiting the use of its own property to that property's intended purpose outweighs the interest of those wishing to use the property for other purposes.²⁶ Accordingly, the extent to which the government can control access depends on the nature of the relevant forum. Because a principal purpose of traditional public fora is the free exchange of ideas, speakers can be excluded from a public forum only when the exclusion is necessary to serve a compelling state interest and the exclusion is narrowly drawn to achieve that interest.²⁷ Similarly, when the government has intentionally designated a place or means of communication as a public forum, speakers cannot be excluded without a compelling governmental interest. Access to a nonpublic forum, however, can be restricted as long as the restrictions are reasonable and are not an effort to suppress expression merely because public officials oppose the speaker's view.²⁸

The government is free to open properties for expressive use by the general public or by a particular class of speakers, thereby creating designated public fora.²⁹ Where property is not a traditional public forum and the government has not chosen to create a designated public forum, the property is either a nonpublic forum or not a forum at all, for purposes of First Amendment analysis.³⁰ To create a designated public forum, the government must intend to make the property generally available to a class of speakers. A designated public forum is not created when the government allows selective access for individual speakers, rather than general access for a class of speakers.³¹ The government does not create a designated public forum when it does no more than reserve eligibility for access to

¹⁵ *Id.*

¹⁶ *Cooper v. Dillon*, 403 F.3d 1208 (11th Cir. 2005).

¹⁷ *Snowden v. Town of Bay Harbor Islands, Florida*, 358 F. Supp. 2d 1178 (S.D. Fla. 2004).

¹⁸ *Top Rank, Inc. v. Florida State Boxing Com'n*, 837 So. 2d 496 (First DCA 2003).

¹⁹ *Simmons v. State*, 944 So. 2d 317 (2006).

²⁰ *Rodriguez v. State*, 920 So. 2d 624 (2005).

²¹ *State v. O'Daniels*, 911 So. 2d 247 (Third DCA 2005).

²² *DA Mortg., Inc. v. City of Miami Beach*, 486 F.3d 1254 (11th Cir. 2007).

²³ *State v. Hanna*, 901 So. 2d 201 (Fifth DCA 2005).

²⁴ *State v. O'Daniels*, 911 So. 2d 247 (Third DCA 2005).

²⁵ *Greer v. Spock*, 424 U.S. 828, 96 S. Ct. 1211, 47 L. Ed. 2d 505 (1976).

²⁶ *Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 105 S. Ct. 3439, 87 L. Ed. 2d 567 (1985).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Arkansas Educ. Television Com'n v. Forbes*, 523 U.S. 666, 118 S. Ct. 1633, 140 L. Ed. 2d 875 (1998).

³⁰ *Id.*

³¹ *Id.*

the forum to a particular class of speakers, whose members must then, as individuals, obtain permission to use it.³²

Whether or not a decision by the board to not approve a person or group's request to erect a historical monument violates that person or group's freedom of speech depends on the individual set of facts and the board's reason for not approving the request.

B. RULE-MAKING AUTHORITY:

The Department of Environmental Protection is given rule-making authority to specify content of the public notice provided when a historical monument is to be erected in a state park.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2014, the Agriculture and Natural Resources (ANR) Subcommittee reported HB 493 favorably as a committee substitute. The ANR subcommittee adopted a strike-all amendment to HB 493. The amendment requires the division to publish notice of the division's decision to erect a historical monument at a site of historic interest and value. The public notice must be published for one week in a newspaper of general circulation within the county or counties where the historical site is located. If there is no newspaper of general circulation within such county/counties, the division must post a notice at each entrance to the site of historical interest where the proposed historical monument is to be erected. DEP is authorized to adopt rules specifying the content of the public notice.

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This analysis is drafted to the committee substitute as passed by the ANR subcommittee.

³² *Id.*