

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 803 Historic and Archaeological Artifacts
SPONSOR(S): Economic Development and Tourism Subcommittee; Stone and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1054

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 1 N, As CS	Lukis	Duncan
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Under Florida law, the Division of Historical Resources of the Department of State (Division) is responsible for protecting historical resources abandoned on state-owned lands or on state-owned sovereignty submerged lands. In addition to many other powers authorized by law to carry out such responsibility, s. 267.115, F.S., authorizes the Division to "implement a program to administer finds of isolated historic artifacts from state-owned river bottoms whereby the Division may transfer ownership of such artifacts to the finder in exchange for information about the artifacts and the circumstances and location of their discovery."

Currently, no such program exists. Moreover, any person that removes or attempts to remove or defaces, destroys, or otherwise alters historical resources on state land without a permit is subject to criminal penalties. The only permits presently available are reserved for professional archaeologists for field investigations and other professional or educational research and commercial salvors for exploration and salvage of historic shipwreck sites.

The bill requires the Division to implement a program to administer the discovery of isolated historic or archaeological artifacts from sovereignty submerged lands. The program must, at a minimum, include the following:

- an application for an annual permit and an application fee of \$100;
- a written agreement to report all discovered and removed artifacts to the Division within 14 days after the discovery and removal, along with a map indicating the location of the discovery and photographs of the artifacts, and to allow the Division to inspect, analyze, and photograph any such artifacts;
- a requirement that tools may not be used for the excavation of any isolated artifacts, except that a trowel or hand-held implement may be used to extract exposed artifacts from a packed matrix in a river or lake bottom;
- a map, that must be provided to an applicant with the issuance of a permit, of clearly defined areas and sites that are excluded from excavation activities;
- authorization to transfer ownership rights for discovered artifacts to the permit-holder; and
- penalties for violations of program requirements, including, but not limited to, an administrative fine of up to \$1,000 and forfeiture of the permit and ownership rights for any artifacts discovered under the program.

There is no impact on local government revenues. According to the Department of State, an annual expenditure of \$126,445 is required to administer the program as described in the bill. See FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT for additional comments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Policy

Florida law provides that “the rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations.”¹ Florida law provides further that “the destruction of these nonrenewable historical resources will engender a significant loss to the state’s quality of life, economy, and cultural environment.”²

Accordingly, Florida has adopted a state policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state’s historic environment and resources.³ Florida has also adopted the state policy that all “objects having intrinsic or historical and archaeological value which have been abandoned on state-owned lands or state-owned sovereignty submerged lands shall belong to the state with the title thereto vested in the Division of Historical Resources of the Department of State for the purposes of administration and protection.”⁴

Under Florida law, “historic property” or “historic resource” means “any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, and folklife *sic* resources.” Such properties or resources may include, but are not limited to, the following:

- monuments;
- memorials;
- Indian habitations;
- ceremonial sites;
- abandoned settlements;
- sunken or abandoned ships;
- engineering works;
- treasure trove;
- artifacts; or
- other objects with intrinsic historical or archaeological value, relating to the history, government, and culture of the state.⁵

The Florida Department of State, Division of Historical Resources

In order to carry out the abovementioned state policy, Florida law bestows upon the Division of Historical Resources (DHR or Division) particular powers and responsibilities.⁶ It is the Division’s responsibility to:

- direct and conduct a statewide survey of historic resources and to maintain an inventory of such resources;⁷

¹ Section 267.061(1), F.S.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Section 267.021(3), F.S.

⁶ Section 267.031(5), F.S.

- develop a statewide historic preservation plan;
- ensure that historic resources are taken into consideration at all levels of planning and development;
- advise and assist, as appropriate, federal and state agencies, local governments, organizations, and individuals in carrying out and developing historic preservation responsibilities and programs;
- provide public information, education, and technical assistance relating to historic preservation programs;
- carry out on behalf of the state the programs of the National Historic Preservation Act of 1966, as amended;
- establish professional standards for the preservation, exclusive of acquisition, of historic resources in state ownership or control;
- establish and maintain a central inventory of historic properties for the state which shall consist of all such properties as may be reported to the division (known as “the Florida Master Site File”);
- protect historical resources abandoned on state-owned lands or on state-owned sovereignty submerged lands;
- advise and assist, as appropriate, federal and state agencies, local governments, and organizations and individuals in the recognition, protection, and preservation of Florida’s archaeological sites and artifacts; and
- take other actions necessary or appropriate to promote the location, acquisition, protection, preservation, operation, and interpretation of historic resources to foster an appreciation of Florida history and culture.⁸

The Division may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations and individuals, or federal agencies as it may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its powers.⁹

Further, Florida law authorizes and directs all law enforcement agencies and offices to assist the Division in carrying out its duties.¹⁰

Permits

The Division may issue permits for the following activities:

- survey, exploration, excavation, and salvage activities to identify or recover historical property;
- archaeological excavation for scientific or educational purposes on state-owned lands or on state-owned sovereignty submerged lands;¹¹ and
- exploration and salvage of historic shipwreck sites by commercial salvors on state-owned sovereignty submerged lands.¹²

The Florida Administrative Code defines “sovereignty submerged lands” as those lands including, but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters to which the

⁷ *Id.* The Division shall maintain an adequate record of all objects in its custody which have a historical or archaeological value. Once each year, on July 1 or as soon thereafter as practicable, the division shall take a complete inventory of all such objects in its custody the value or cost of which is \$500 or more and a sample inventory of such objects the value or cost of which is less than \$500. Section 267.115(1), F.S.

⁸ Section 267.031(5), F.S.

⁹ Section 267.031(2), F.S.

¹⁰ Section 267.031(4), F.S.

¹¹ Section 267.031(5)(n), F.S.; *see also* s. 267.12, F.S., regarding research permits.

¹² Section 267.031(5)(n), F.S.

State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated.¹³

Florida law requires the Division to adopt rules to administer the issuance of permits for all such activities.¹⁴ Additionally, the Division must adopt rules to administer the transfer of objects recovered by commercial salvors under permit in exchange for recovery services provided to the state.¹⁵

Currently, the Division's Bureau of Archaeological Research (Bureau) administers permitting programs for archaeological work on state lands, both terrestrial and submerged.¹⁶ The Bureau issues permits for archaeological field investigations on all state-owned lands pursuant to Ch. 1A-32, Florida Administrative Code (F.A.C.), and permits to commercial salvors for exploration and salvage of historic shipwreck sites on state owned sovereignty submerged lands pursuant to Ch. 1A-31, F.A.C.

The Bureau only issues Ch. 1A-32 permits to professional archaeologists who have histories of responsible work and project completion.¹⁷ The permitting process requires archaeologists to turn in reports, site forms, and cultural material within one year of fieldwork completion.¹⁸

The Bureau only issues Ch. 1A-31 permits after applicants have supplied or demonstrated the following:

- evidence of sufficient financial ability to conduct the permitted activities;
- project participants possess sufficient qualifications, resources, and abilities to successfully complete the permitted activities;
- a letter of intent from a professional underwater archaeologist who has agreed to serve as project archaeologist;
- proposed project activities will utilize professionally accepted techniques for exploration, identification, recovery, recording, conservation and/or stabilization, and analysis of archaeological materials recovered; and
- an adequate plan for the conservation and/or stabilization, analysis, and curation of all archaeological materials recovered, records, and other materials resulting from the permitted activities.¹⁹

Permit-holders that violate the requirements or conditions of their permits are subject to fines and permit suspension or revocation.²⁰

Criminal Penalties for Violations

Florida law provides that any person that removes or attempts to remove or defaces, destroys, or otherwise alters historical resources on state land without a permit must forfeit all objects or materials collected from the land and is subject to criminal penalties.²¹ Any person who conducts such action by means "other than" excavation²² commits a misdemeanor in the first degree.²³ Any person who

¹³ Rule 18-21.003(61), F.A.C.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Department of State, 2016 Agency Bill Analysis, January 1, 2016, page 2. Analysis on file with House Economic Development & Tourism Subcommittee.

¹⁷ Department of State, 2016 Agency Bill Analysis, January 1, 2016, page 2. Analysis on file with the House Economic Development & Tourism Subcommittee.

¹⁸ *Id.*

¹⁹ Rule 1A-31.050, F.A.C.

²⁰ Rules 1A-31.085, 1A-32.006, F.A.C.; *see also*, Section 267.13(2), F.S.

²¹ *See* s. 267.13(1)(a),(b), F.S.

²² "Excavation" means any manmade cut, cavity, trench, or depression in the earth's surface, formed by removal of earth, intended to change the grade or level of land, or intended to penetrate or disturb the surface of the earth, including land beneath the waters of the state, as defined in s. 373.019(22), F.S. Section 556.102(6), F.S.

²³ Section 267.13(1)(a), F.S.

knowingly and willfully conducts such action by means of excavation commits a felony in the third degree.²⁴

Moreover, any person who offers for sale or exchange any object or material with knowledge that it has previously been collected or excavated in violation of law without the express consent of the Division, commits a felony of the third degree.²⁵

In addition to state law, the federal Archaeological Resources Protection Act of 1970 (ARPA) prohibits the excavation, removal, damage, alteration, or defacement of archaeological resources located on federal or tribal lands without, or in violation of, a federal permit.²⁶ ARPA also makes it illegal to transfer resources obtained in violation of state law across state lines.²⁷ Any person who knowingly violates or counsels any other person to violate ARPA may face fines of up to \$100,000 and imprisonment of up to five years.²⁸

Isolated Finds Program

Florida law authorizes the Division to “implement a program to administer finds of isolated historic artifacts from state-owned river bottoms whereby the Division may transfer ownership of such artifacts to the finder in exchange for information about the artifacts and the circumstances and location of their discovery.”²⁹

The Division implemented such an “isolated finds” program in 1996; however, the Division discontinued the program in 2005 upon the recommendation of the Florida Historical Commission.³⁰

Amnesty Report

In 2015, the Legislature³¹ directed the Florida Department of State, in consultation with the Fish and Wildlife Conservation Commission, to prepare a report on the feasibility of implementing a one-time amnesty program of limited duration for persons who possess specimens, objects, or materials of historical or archaeological value found on land owned or controlled by the state or on land owned by a water authority.³²

The Division submitted its report to the Governor, President of the Senate, and Speaker of the House of Representatives on October 15, 2015.³³ The report concludes, in part, that “the costs, both tangible and intangible, of an amnesty program would clearly outweigh any value returned to the citizens by archaeological information that could potentially be gained,” and that, therefore, “it is not feasible to implement.”³⁴

Operation Timucua

²⁴ Section 267.13(1)(b), F.S.; *Shearer v. State*, 754 So. 2d, 192 (FL 1st DCA 2000).

²⁵ Section 267.13(1)(c), F.S.

²⁶ Department of State, 2016 Agency Bill Analysis, January 1, 2016, page 2. Analysis on file with House Economic Development & Tourism Subcommittee. *See also* 16 U.S.C.A. § 470aa.-mm. (2016).

²⁷ 16 U.S.C.A. § 470ee. (2016).

²⁸ *Id.* The fine amount and length of imprisonment is determined, in part, by the value of resources taken from the land.

²⁹ Section 267.115(9), F.S.

³⁰ Department of State, 2016 Agency Bill Analysis, January 1, 2016, page 2. Analysis on file with House Economic Development & Tourism Subcommittee.

³¹ Florida Legislature, 2015-2016 General Appropriations Act, SB 2500-A, Line Item 3083; Ch. 2015-232, Laws of Florida.

³² Feasibility Report On a One-Time Artifact Amnesty Program, Florida Department of State, Division of Historical Resources, October 15, 2015, page 1. Report on file with House Economic Development & Tourism Subcommittee.

³³ Department of State, 2016 Agency Bill Analysis, January 1, 2016, page 2. Analysis on file with House Economic Development & Tourism Subcommittee.

³⁴ Feasibility Report On a One-Time Artifact Amnesty Program, page 33. Report on file with House Economic Development & Tourism Subcommittee.

In early 2013, 14 people were arrested on state and federal charges for illegally uncovering and removing artifacts from state land and then selling the items on the black market.³⁵ The arrests were the result of a two-year undercover sting operation largely conducted by the Florida Fish and Wildlife Conservation Commission (FWC), called "Operation Timucua."³⁶ The Operation, and news headlines that covered the Operation, fueled a debate over the intensity of the laws regulating the finding and selling of artifacts, the tactics used to target the individuals under arrest, and the impact the arrests had on the individuals targeted.³⁷

Effect of Proposed Changes

The bill requires the Division to implement a program to administer the discovery of isolated historic or archaeological artifacts from sovereignty submerged lands. The program must, at a minimum, include the following:

- an application for an annual permit and an application fee of \$100;
- a written agreement to report all discovered and removed artifacts to the Division within 14 days after the discovery and removal, along with a map indicating the location of the discovery and photographs of the artifacts, and to allow the Division to inspect, analyze, and photograph any such artifacts;
- a requirement that tools may not be used for the excavation of any isolated artifacts, except that a trowel or hand-held implement may be used to extract exposed artifacts from a packed matrix in a river or lake bottom;
- a map, that must be provided to an applicant with the issuance of a permit, of clearly defined areas and sites that are excluded from excavation activities;
- authorization to transfer ownership rights for discovered artifacts to the permit-holder; and
- penalties for violations of program requirements, including, but not limited to, an administrative fine of up to \$1,000 and forfeiture of the permit and ownership rights for any artifacts discovered under the program.

The bill also requires the Division to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the program. Such rules must include, at a minimum:

- procedures to send a notice of violation to alleged violators; and
- procedures to administer the administrative fine for violators.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 267.115, F.S., requiring the Division of Historical Resources to implement a program to administer the discovery of isolated historic or archaeological artifacts from sovereignty submerged lands; providing for requirements of the program.

Section 2: Provides an effective date of July 1, 2016.

³⁵ E.g., Tampa Bay Times, "North Florida arrowhead sting: What's the point?," by Ben Montgomery. January 2, 2014. Available at: <http://www.tampabay.com/features/humaninterest/north-florida-arrowhead-sting-whats-the-point/2159379>. Last visited, January 8, 2016.

³⁶ *Id.*

³⁷ *Id.* See also: The Florida Anthropological Society Response to the Tampa Bay Times Article by Jeffrey T. Moetes, President of the Florida Anthropological Society, at: <http://flanthsocblog.blogspot.com/2014/01/fas-response-to-tampa-bay-times-article.html>. Last visited, January 8, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The \$100 permitting fee and fine of up to \$1,000 for violations of program requirements in the bill may result in state revenue.

2. Expenditures:

According to the Department of State (DOS), an annual expenditure of \$126,445 is required for the annual salaries of three new full-time equivalent positions needed to carry out the program as described in the bill.³⁸

DOS also states that the program described in the bill would result in “an increase in software costs” due to the need to create an electronic mapping system and database to catalog discovered artifacts and their location.³⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals seeking to participate in the program as described in the bill are required to pay \$100 for a permit and are subject to a fine of up to \$1000 for violations of program requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

According to DOS, the bill, if passed, would impact the following rules:

- Chapter 1A-32, F.A.C., Archaeological Research;

³⁸ Department of State, 2016 Agency Bill Analysis, January 1, 2016, page 4. Analysis on file with House Economic Development & Tourism Subcommittee.

³⁹ *Id.*

- Chapter 1A-31, F.A.C., Procedures for Conducting Exploration and Salvage of Historic Shipwreck Sites;
- Chapter 1A-40, F.A.C., Administration of Permanent Collections; and
- Chapter 1A-46, F.A.C., Archaeological and Historical Report Standards and Guidelines.⁴⁰

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Economic Development and Tourism Subcommittee adopted one amendment to the bill. The bill amendment requires the Division to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the program provided for in the bill. Such rules must include, at a minimum:

- procedures to send a notice of violation to alleged violators; and
- procedures to administer the administrative fine for violators.

This analysis has been updated to reflect the amendment.

⁴⁰ Department of State Analysis, page 3.
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