

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1251 Preservation of Memorials

SPONSOR(S): Roach

TIED BILLS: **IDEN./SIM. BILLS:** SB 1690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	15 Y, 0 N	Villa	Smith
2) Judiciary Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Various memorials, monuments, and places of recognition have been created throughout the state recognizing historical events or significant accomplishments of the residents of this state.

A person who willfully places graffiti or otherwise vandalizes and damages the real or personal property of another is guilty of criminal mischief, punishable as follows:

- If the damage to property is \$200 or less, it is a second degree misdemeanor punishable by 60 days imprisonment and a \$500 fine.
- If the damage to property is between \$200 and \$1,000, it is a first degree misdemeanor punishable by one year imprisonment and a \$1,000 fine.
- If the damage to property is greater than \$1,000, it is a third degree felony punishable by five years imprisonment and a \$5,000 fine.

A minor found guilty of criminal mischief for placing graffiti on any public or private property may have his or her driving privilege revoked, suspended, or withheld for up to one year. To reduce the sentence of revocation, suspension, or withholding he or she may elect to perform community service in the form of cleaning graffiti from public property.

The bill creates the Historical Memorials Preservation Act, defining memorial and providing that any person or entity that damages, destroys, takes, or removes a memorial without proper authorization is civilly liable for the full cost of repair or replacement of the memorial. Such person or entity will also be liable for treble damages, attorney fees, and court costs associated with an action brought to recover damages. The bill provides that anyone who willfully damages, defaces, or removes a memorial commits a felony of the third degree, punishable by up to five years imprisonment and a \$5,000 fine.

The bill further provides that a minor choosing to reduce his or her driver's license suspension, revocation, or withholding via community service may apply the cleaning of graffiti on memorials or the general cleanup of parks dedicated to veterans or historic sites towards the community service requirement.

Additionally, the bill prohibits a plaque, sign, or any other object that would obstruct the view of a memorial on public property, or that would convey information about the memorial, from being placed on or next to a memorial in existence on or before January 1, 2019, without the express written approval of the Secretary of State.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Memorials

Various memorials, monuments, and places of recognition have been created throughout the state recognizing historical events or significant accomplishments of the residents of this state. Included in these memorials are ones located on the grounds of the Capitol Complex¹, such as the:

- Florida Women's Hall of Fame
- Florida Medal of Honor Wall
- Florida Veterans' Hall of Fame
- POW-MIA Chair of Honor Memorial
- Florida Veterans' Walk of Honor
- Florida Veterans' Memorial Garden
- Florida Law Enforcement Officers' Hall of Fame
- Florida Holocaust Memorial
- Florida Slavery Memorial

Civil Liability and Treble Damages

A statute may subject a person to civil liability for damages caused by the person's criminal behavior. "Civil liability" is the quality, state, or condition of being legally obligated or accountable for civil damages.² "Treble damages" are damages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed.³

Criminal Mischief

A person commits the offense of criminal mischief if he or she (1) willfully and maliciously (2) injures or damages (3) real or personal property belonging to another, including the placement of graffiti or other acts of vandalism.⁴ Criminal mischief is punishable as follows:

- If the damage to property is \$200 or less, it is a second degree misdemeanor punishable by 60 days imprisonment and a \$500 fine.⁵
- If the damage to property is between \$200 and \$1,000, it is a first degree misdemeanor punishable by one year imprisonment and a \$1,000 fine.⁶
- If the damage to property is greater than \$1,000, it is a third degree felony punishable by five years imprisonment and a \$5,000 fine.⁷

If the offense is related to the placement of graffiti, the offender is required to perform 100 hours of community service that, if possible, involves the removal of graffiti. If not possible, the offender is

¹ Section 281.01, F.S., defines capitol complex to mean portions of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term also includes the State Capital Circle Office Complex located in Leon County, Florida.

² *Civil Liability*, Black's Law Dictionary (11th ed. 2019).

³ *Treble Damages*, Black's Law Dictionary (11th ed. 2019).

⁴ Section 806.13(1)(a), F.S.

⁵ Section 806.13(1)(b)1., F.S. If the offender has one or more criminal mischief violations, then the charge must be reclassified as a third degree felony. Section 806.13(1)(a)4.

⁶ Section 806.13(1)(b)2., F.S. If the offender has one or more criminal mischief violations, then the charge must be reclassified as a third degree felony. Section 806.13(1)(a)4.

⁷ Section 806.13(1)(b)3., F.S. This punishment may be aggravated if the court finds the defendant to be a habitual felony offender. See section 775.084, F.S.

required to perform at least 40 hours of community service.⁸ Furthermore, in addition to any other criminal penalty imposed, the offender must pay a fine of:

- At least \$250 for the first offense;
- At least \$500 for the second offense; and
- At least \$1,000 for the third offense.^{9,10}

Special Penalties for Minors

Currently, a minor who is found guilty of criminal mischief for placing graffiti on any public or private property may have his or her driving privilege revoked, suspended, or withheld for up to one year, in addition to other penalties.¹¹ To reduce the sentence of revocation, suspension, or withholding he or she may elect to perform community service in the form of cleaning graffiti from public property, at a rate of one day's suspension per hour community service worked.¹²

Effect of the Bill

The bill creates the "Historical Memorials Protection Act" (the Act).

The bill defines the term "memorial" to mean a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising this state or the United States. The term includes, but is not limited to, the following memorials established by law:

- Florida Women's Hall of Fame;
- Florida Medal of Honor Wall;
- Florida Veterans' Hall of Fame;
- POW-MIA Chair of Honor Memorial;
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden;
- Florida Law Enforcement Officers' Hall of Fame;
- Florida Holocaust Memorial;
- Florida Slavery Memorial; and
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

The bill provides that any person or entity that damages, destroys, takes, or removes a memorial without authorization is civilly liable for the full cost of repair or replacement of the memorial. In addition, such person or entity is liable for treble damages, attorney fees, and court costs associated with any action brought to recover the damages for the cost of repair or replacement. The bill provides that a resident of this state, a historical preservation organization, a military veteran, a veterans' organization, or a law enforcement or benevolent organization has standing to seek enforcement of the Act through civil action in the circuit court in the county in which the memorial that has been damaged or destroyed is located.

The bill provides that a person who willfully damages, defaces, or removes a memorial that is owned or erected by a governmental entity, museum, historical society, or a similar public or private organization, or a memorial located in a cemetery or on a grave or tombstone, commits a felony of the third degree, punishable by up to five years imprisonment and a \$5,000 fine.

⁸ Section 806.13(6)(b), F.S.

⁹ Section 806.13(6)(a), F.S.

¹⁰ If the offender is a minor, the parent or legal guardian of the minor is liable along with the minor for payment of the fine. However, the court may decline to order a person to pay the fine if the court finds the person indigent or otherwise unable to pay the fine. Section 806.13(6)(c), F.S.

¹¹ Section 806.13(7), F.S.

¹² Section 806.13(8), F.S.

A minor choosing to reduce his or her driver's license suspension, revocation, or withholding via community service may apply the cleaning of graffiti towards such community service. The bill expands community service to include the cleaning of graffiti on memorials or the general cleanup of parks dedicated to veterans or historic sites.

Additionally, the bill prohibits any plaque, sign, picture, marker, exhibit, notice, or other object that would obstruct the view of a memorial on public property, or that would convey information about the memorial, from being placed on or adjacent to any memorial in existence on or before January 1, 2019, without the express written approval of the Secretary of State.

B. SECTION DIRECTORY:

Section 1 provides that this act may be cited as the "Historical Memorials Protection Act."

Section 2 creates s. 265.710, F.S., relating to civil liability for damaging, destroying, or removing memorials.

Section 3 amends s. 806.13, F.S., relating to criminal mischief.

Section 4 provides an effective date of October 1, 2020.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.