

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 1632

INTRODUCER: Senator Rouson

SUBJECT: Cultural Affairs

DATE: February 7, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1632 designates the Secretary of State as “Florida’s Chief Arts and Cultural Officer” rather than the chief cultural officer. The bill also renames the Division of Cultural Affairs within the Department of State as the Division of Arts and Culture and makes conforming changes.

The bill repeals ss. 265.601, 265.602, 265.603, and 265.605, F.S., relating to the Cultural Endowment Program. New endowment applications for the Cultural Endowment Program have not been funded by the Legislature since 2016.<sup>1</sup> The 133 active endowment accounts will continue to require monitoring by the division, and the endowment share owners will continue to be required to submit annual reports and audits.<sup>2</sup>

The bill will have an indeterminate effect on the government sector. See Section V., Fiscal Impact Statement.

The bill takes effect on July 1, 2020.

**II. Present Situation:**

**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 head of the DOS is the Secretary of State (Secretary).<sup>3</sup> The Secretary is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of

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<sup>1</sup> Department of State, *Senate Bill 1632 Agency Legislative Analysis* (undated) (on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>2</sup>*Id.*

<sup>3</sup> Section 20.10, F.S.

the Governor. The Secretary performs functions conferred by the State Constitution upon the custodian of records.

### ***The Division of Cultural Affairs***

The Division of Cultural Affairs is Florida's designated state arts agency. The Division promotes arts and culture as essential to the quality of life for all Floridians. To promote excellence and encourage access to cultural opportunities, the Division provides funding, programs and resources, including grants for: arts in education, local arts agencies, state service organizations, museums, theater, dance, folk arts, literature, media arts, multidisciplinary, music, sponsor/presenter, and visual arts programs and projects. The Division of Cultural Affairs also administers the Museum of Florida History and has its offices in the historic Brokaw-McDougall House.<sup>4</sup>

Section 15.18, F.S., provides that the Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the Department of State promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity. The Secretary of State, as the head administrator of these divisions, is designated as "Florida's Chief Cultural Officer." The Secretary of State is encouraged to initiate and develop relationships between the state and foreign governmental officials in order to promote Florida as the center of American creativity. The Secretary of State shall coordinate international activities as they relate to international and cultural relations with the Florida International Affairs Commission. To accomplish these purposes, the secretary has the power and authority to do the following:

- Disseminate any information pertaining to the State of Florida which promotes the state's cultural assets;
- Plan and carry out activities designed to cause improved cultural and governmental programs and exchanges with foreign countries;
- Plan and implement cultural and social activities for visiting foreign heads of state, diplomats, dignitaries, and exchange groups;
- Encourage and cooperate with other public and private organizations or groups in their efforts to promote the cultural advantages of Florida;
- Serve as the liaison with all foreign consular and ambassadorial corps, as well as international organizations, that are consistent with the purposes of expanding international and cultural relations; and
- Provide, arrange, and make expenditures for the achievement of any or all of the purposes specified in this section.

### ***Division of Historical Resources***

The Division of Historical Resources is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The Division Director's Office oversees a Historic Preservation Grants program to help preserve and maintain Florida's historic buildings and archaeological sites, coordinates outreach programs, such as the State Historical Markers

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<sup>4</sup> Florida Department of State, Division of Cultural Affairs, About Us, Mission, available at <https://dos.myflorida.com/cultural/about-us/mission/> (last visited on February 5, 2020).

program and Florida Folklife program which identifies and promotes the state's traditional culture. The Division director serves as the State Historic Preservation Officer, acting as the liaison with the national historic preservation program conducted by the National Park Service.<sup>5</sup>

The Division of Historical Resources is comprised of the Bureau of Historic Preservation (BHP) and the Bureau of Archaeological Research (BAR). The BHP manages the Florida Main Street Program, and under federal and state laws, oversees the National Register of Historic Places program for Florida, maintains an inventory of the state's historical resources in the Florida Master Site File, assists applicants in federal tax benefit and local government ad valorem tax relief programs for historic buildings, and reviews the impact that development projects may have on significant historic resources. The BAR is responsible for the state's archaeological programs, including surveys and excavations throughout the state, maintenance of records on historical resources that have been recorded, and assistance to consultants and planners in protecting sites.<sup>6</sup>

### ***Division of Library and Information Services***

The Division of Library and Information Services manages the State Library and Archives, supports public libraries, directs record management services, and is the designated information resource provider for the state of Florida.<sup>7</sup>

The Division may receive gifts of money, books, or other property and may purchase books, periodicals, furniture, and equipment it deems necessary to carry out its mission. The Division may also give aid and assistance to all school, state, academic, free, and public libraries, and to all communities in the state which may establish libraries. The Division is required to maintain a library for state officials and employees and provide research and informational services for all state agencies. The Division must also provide library services to blind and physically handicapped persons within the state.<sup>8</sup>

### ***Secretary of State – Florida's Chief Cultural Officer***

The Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the Department promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity.<sup>9</sup> The Secretary is designated as "Florida's Chief Cultural Officer" and is encouraged to initiate and develop relationships between the state and foreign governmental officials in order to promote Florida as the center of American creativity.<sup>10</sup> As Florida's Chief Cultural Officer, the Secretary must coordinate international activities with Enterprise Florida, Inc., and any other organization the Secretary deems to be appropriate.<sup>11</sup> To accomplish these purposes, the secretary has the power and authority to do the following:

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<sup>5</sup> Florida Department of State, Division of Historical Resources, About, Program Areas, available at <https://dos.myflorida.com/historical/about/> (last visited on February 4, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> Florida Department of State, Division of Library and Information Services, available at <https://dos.myflorida.com/library-archives/> (last visited on February 4, 2020).

<sup>8</sup> Section 257.04, F.S.

<sup>9</sup> Section 15.18, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

- Disseminate any information pertaining to the state which promotes the state's cultural assets;
- Plan and carry out activities designed to cause improved cultural and governmental programs and exchanges with foreign countries;
- Plan and implement cultural and social activities for visiting foreign heads of state, diplomats, dignitaries, and exchange groups;
- Encourage and cooperate with other public and private organizations or groups in their efforts to promote the cultural advantages of Florida;
- Serve as the liaison with all foreign consular and ambassadorial corps, as well as international organizations, that are consistent with the purposes of expanding international and cultural relations; and
- Provide, arrange, and make expenditures for the achievement of any or all of the purposes specified in this section.<sup>12</sup>

### **Florida Arts and Cultural Act**

The Florida Arts and Cultural Act (the Act) is set forth in ss. 265.281-265.709, F.S. The Legislative intent of the Act is to provide stat support for, and to gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums and nonprofit organizations.<sup>13</sup> The Act defines the term “division” to mean the Division of Cultural Affairs of the Department of State.<sup>14</sup> The division is charged with directly administering and overseeing all programs authorized by the Act. The division must:

- Accept and administer state and federal funds appropriated by the Legislature or funds received from other public or private sources.
- Advance funds for grants on a quarterly basis.
- Enter into agreements for awarding grants or other contracts.
- Consult with and advise other individuals, groups, organizations or state agencies and officials, particularly the Governor and the Cabinet, concerning the acquisition by gift or purchase of fine art works, the appropriate use and display of state-owned art treasures for maximum public benefit, and the suitability of any structures or fixtures, including framing, primarily intended for ornamental or decorative purposes in the interior of public buildings.
- Accept on behalf of the state donations of money, property, art objects, and antiquities.<sup>15</sup>
- Sponsor performances and exhibits; promote and encourage the study and appreciation of arts and culture; and collect, publish, and print pamphlets, papers, newsletters, and other materials related to arts and cultural programs available throughout the state.
- Conduct and support cultural programs and cultural exchanges by coordinating with the appropriate state agencies and other organizations.
- Accept funding and other forms of support for the purposes in this act.

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<sup>12</sup> *Id.*

<sup>13</sup> Section 285.282, F.S.

<sup>14</sup> Section 285.283(4), F.S.

<sup>15</sup> Such donations of money and any cash income may be received from the disposal of any donations of property, art objects, or antiquities, which shall be deposited into the Grants and Donations Trust Fund and are hereby appropriated for use by the division for the purposes authorized in the Act.

- Notwithstanding s. 287.022 or s. 287.025(1)(e), enter into contracts to insure museum collections, artifacts, relics, and fine arts to which it holds title or which are on loan to the division.
- Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.<sup>16</sup>

Section 265.2865, F.S., establishes the Florida Artists Hall of Fame which recognizes persons, living or deceased, who have made significant contributions to the arts in Florida either as performing or practicing artists in individual disciplines. The Florida Artists Hall of Fame Wall is located on the Plaza level in the rotunda of the Capital building.<sup>17</sup> The Florida Council on Arts and Culture accepts nominations annually for persons to be recommended as members of the Florida Artists Hall of Fame and then makes recommendations to the Secretary of those person who were born in Florida or adopted Florida as their home state and base of operation and made a significant contribution to the enhancement of the arts in this state.<sup>18</sup> The Secretary must name no more than four members to the Florida Artists Hall of Fame in any one year.<sup>19</sup> The DOS is authorized to adopt rules to implement the provisions of the Cultural Endowment Program.<sup>20</sup>

### ***The Cultural Endowment Program***

The Cultural Endowment Program is established under the Act and creates an endowment matching fund program to guarantee sufficient operating resources for those cultural organizations which participate.<sup>21</sup> Section 265.603, F.S., sets forth definitions for terms used within the Cultural Endowment Program provisions. The term “cultural” is defined to mean the disciplines of dance, music, theater, visual arts, literature, media arts, interdisciplinary and multidisciplinary, and programs of museums.<sup>22</sup> “Sponsoring organization” is defined to mean a cultural organization which:

- Is designated as not for profit pursuant to s. 501(c)(3) or (4) of the Internal Revenue Code of 1954;
- Is described in, and allowed to receive contributions pursuant to, the provisions of s. 170 of the Internal Revenue Code of 1954;
- Is a corporation not for profit incorporated pursuant to chapter 617; and
- Is primarily and directly responsible for conducting, creating, producing, presenting, staging, or sponsoring a cultural exhibit, performance, or event.<sup>23</sup>

Information, which if released, would identify donor and amounts contributed by donors to the trust fund or local organization’s matching fund, at the request of the donor, is made confidential and exempt from the provisions of s. 119.07(1), F.S. Additionally, information, which if released, would identify prospective donors is made confidential and exempt from the provisions of s. 119.07(1), F.S., when the department or the local organization has identified the prospective

<sup>16</sup> Section 265.284(3)(a) – (j), F.S.

<sup>17</sup> *Florida Artists Hall of Fame*, <https://dos.myflorida.com/cultural/programs/florida-artists-hall-of-fame/> (last visited February 3, 2020).

<sup>18</sup> Section 265.2865(3), F.S.

<sup>19</sup> Section 265.2863(4), F.S.

<sup>20</sup> Section 265.605(1), F.S.

<sup>21</sup> Sections 265.601 and 265.602, F.S.

<sup>22</sup> Section 265.603(3), F.S.

<sup>23</sup> This provision includes museums owned and operated by political subdivisions of the state, except those constituted pursuant to s. 1004.67, F.S.

donor itself and has not obtained the name of the prospective donor by copying, purchasing, or borrowing names from another organization or source.<sup>24</sup>

Section 265.606(1), F.S., provides that to be eligible for receipt of state matching funds, the local sponsoring organization must:

- Establish a cultural<sup>25</sup> endowment program fund or funds, which it shall administer and invest.
- Deposit into the appropriate program fund account the required matching funds which have been collected from new public and private donations and gifts having a total annual value of at least \$360,000 for each individual endowment.
- Be designated a cultural sponsoring organization by the department, if recommended by the Florida Council on Arts and Culture to the Secretary of State pursuant to the procedures contained in s. 265.285.<sup>26</sup>

Each individual endowment in the Cultural Endowment Program must have the value of \$600,000 of which \$360,000 must be raised by the sponsoring organization with the remaining \$240,000 in matching funds to be contributed by the state.<sup>27</sup> A sponsoring organization that receives a matching fund endowment is eligible to apply for additional matching funds, however, additional endowments must not be awarded more frequently than once every 36 months.<sup>28</sup> A sponsor organization is permitted to establish an endowment program fund for each endowment, or may combine two or more endowments in one program fund.<sup>29</sup>

The organization is required to annually submit a report to the division explaining how endowment funds were utilized.<sup>30</sup> The \$240,000 state matching fund endowment for each individual endowment reverts to the General Revenue Fund if:

- The recipient sponsoring organization is no longer able to manage an endowment;
- The recipient sponsoring organization files for protection under federal bankruptcy provisions; or
- The recipient sponsoring organization willfully expends a portion of the endowment principal of any individual endowment.

The Department of State reports that new endowment applications for the Cultural Endowment Program have not been funded by the Legislature since 2016.<sup>31</sup>

### ***Cultural Facilities – Grants for Acquisition***

The Division is permitted to accept and administer moneys appropriated to it for providing grants to counties, municipalities, and qualifying nonprofit corporations for the acquisition, renovation,

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<sup>24</sup> Section 265.605(2), F.S.

<sup>25</sup> The term “cultural” is defined within the Cultural Endowment Program to mean the disciplines of dance, music, theater, visual arts, literature, media arts, interdisciplinary and multidisciplinary, and programs of museums. Section 265.603, F.S.

<sup>26</sup> Section 265.606(1), F.S.

<sup>27</sup> Section 265.606(3), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Section 265.606(4)(b), F.S.

<sup>31</sup> *See supra* note 1.

or construction of cultural facilities.<sup>32</sup> A county, municipality or qualified corporation<sup>33</sup> may apply for a grant of state funds for the acquisition, renovation, or construction of a cultural facility.<sup>34</sup> The Florida Council on Arts and Culture must review each application for a grant and must annually submit to the Secretary for approval lists of all applications recommended by the council for award of grants, arranged in order of priority.<sup>35</sup>

Any contract administered under s. 265.701, F.S., must require the recordation of a restrictive covenant by the grantee and property owner or purchase of a bond as prescribed by rule to ensure that the facility continues to be used as a cultural facility for a period of 10 years following the grant award.<sup>36</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 15.18, F.S., to provide that the Secretary of State will be known as “Florida’s Chief Arts and Cultural Officer” instead of the chief cultural officer.

**Section 2** amends s. 20.10, F.S., to rename the Division of Cultural Affairs as the Division of Arts and Culture.

**Sections 3 and 5** amend ss. 265.283, and 265.2865, F.S., respectively, to update references to the division.

**Section 4** amends s. 265.284, F.S., to provide that the Secretary will be known as the “Chief Arts and Cultural Officer” instead of the chief cultural officer.

**Section 6** repeals ss. 265.601, 265.602, 265.603, and 265.605, F.S. Section 265.606, F.S., governing the administration of the program continues in effect. The 133 active endowment accounts will continue to require monitoring and the endowment share owners will continue to be required to submit annual reports and audits to the division.<sup>37</sup>

**Section 7** amends s. 265.701, F.S., to update references to the division.

**Section 8** amends s. 265.7025, F.S., to update the definition of “[d]ivision” to mean the Division of Arts and Culture of the Department of State.

**Sections 9 and 10** amend ss. 265.704 and 468.401, F.S., to update references to the division.

**Section 11** provides the act takes effect on July 1, 2020.

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<sup>32</sup> Section 265.701(1), F.S.

<sup>33</sup> For the purposes of this section, a “qualified corporation” is a corporation which is designated a not-for-profit corporation pursuant to s. 501(c)(3) or (4) of the Internal Revenue Code of 1954, and which is described in, and allowed to receive contributions pursuant to the provisions of, s. 170 of the Internal Revenue Code of 1954, and which is a corporation not for profit incorporated pursuant to chapter 617.

<sup>34</sup> Section 265.701(2), F.S.

<sup>35</sup> Section 265.701(3), F.S.

<sup>36</sup> Section 265.701(4), F.S.

<sup>37</sup> *Supra* note 1.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The share owners of the 133 active endowment accounts will continue to incur the cost of annual audits.

**C. Government Sector Impact:**

The bill repeals the Cultural Endowment Program, however, the DOS will continue to incur the expense of processing the annual reports and audits submitted to the division by the current endowment share owners. The DOS will experience a positive fiscal impact because the bill eliminates the need for annual rule revision, acceptance of applications, and organization annual reporting related to future share owners.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 15.18, 20.10, 265.283, 265.284, 265.2865, 265.701, 265.7025, 265.704, and 468.401.

This bill repeals the following sections of the Florida Statutes: 265.601, 265.602, 265.603, and 265.605.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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