

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 Committee on Governmental Oversight and Accountability

BILL: SB 1096

INTRODUCER: Senator Martin

SUBJECT: Monuments and Memorials

DATE: March 14, 2023

REVISED: _____

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

I. Summary:

SB 1096 creates the “Historical Monuments and Memorials Protection Act.” The bill defines the word memorial to mean a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed, placed or located with the intent of being permanently displayed or perpetually maintained, that is dedicated to a historical person, entity, event, or series of events, and that honors or recounts the military service of any past or present military personnel or the past or present public service of a resident of the geographical area comprising this state or the United States of America.

The bill subjects any person or entity that damages, defaces, destroys, or removes a monument or memorial located on publicly owned property to civil liability, and for which they may be required to pay treble damages and punitive damages. A person or entity authorized to alter, move, repair, or replace the monument or memorial is exempt from punitive liability.

Any public entity that owns a monument or memorial, any legal resident of this state, or any entity whose purpose is historic preservation may institute a civil action in circuit court for damages for willfully and maliciously destroying or demolishing a memorial or historic property.

The bill does not prevent an agency from relocating a monument or memorial when relocation is necessary for the construction, expansion, or alternation of any publicly owned building, roads, streets, highways, or other transportation projects. However, if a monument or memorial is relocated, it must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality in which it was originally.

The bill requires any plaque, sign, picture, notice or any other object used to convey information to have written approval by the Secretary before being placed on or near a monument or memorial in existence on or before January 1, 2022.

The bill takes effect July 1, 2023.

II. Present Situation:

Memorials

The Florida Arts and Culture Act¹ (Act) recognizes the vast cultural resources available in the state and is intended to provide state support for, and gain national and international recognition of, efforts, works, and performances of Florida artists, agencies, museums, and nonprofits.² The Act designates the Secretary of State as chief cultural officer of the state, and creates the division of state arts administrative agency (Division) to administer federal arts funding, award grants, and consult with and advise individuals, groups, organizations, and agencies and officials concerning the acquisition of fine arts.³ The Division also sponsors and promotes performances and exhibits, conducts cultural programs and exchanges, and accept funding and support for its purposes.⁴

Criminal Penalty for Destruction of a Memorial

Section 806.135, F.S., provides that it is a second degree felony⁵ for any person to willfully and maliciously destroy or demolish any memorial or historic property, or willfully and maliciously pull down a memorial or historic property, unless authorized by the owner of the memorial or the historic property.

The term “historic property” is defined as any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. A “memorial” is defined as 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 the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- 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;

¹ Sections 265.281-265.703, F.S., comprise the Florida Arts and Culture Act. *See*, s. 265.281, F.S.

² Section 265.282, F.S.

³ Section 265.284, F.S.

⁴ *Id.*

⁵ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082(9)(a)3.c. and 775.083(1)(b), F.S.

- 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.

Section 806.135, F.S, also requires the payment of restitution, which includes the full cost of repair or replacement of such memorial or historic property.

Standing in litigation

For standing, Florida courts require the party prosecuting the claim to be the real party in interest or be expressly authorized by statute to bring the claim on behalf of the real party in interest.

Rule 1.210 of the Florida Rules of Civil Procedure provides, in pertinent part, as follows:

(a) Parties Generally. Every action may be prosecuted in the name of the real party in interest, but . . . a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause. Persons having a united interest may be joined on the same side as plaintiffs or defendants, and anyone who refuses to join may for such reason be made a defendant.

Civil Liability and Damages

The State Constitution provides that “the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.”⁶ In most instances, the aggrieved party is limited to sue for the actual damages incurred.

Treble damages

A statute may subject a person to civil liability for damages caused by the person’s criminal behavior. “Civil liability” is defined by Black’s Law Dictionary as the “debt or legal obligation from a private wrong amounting to the damage done.”⁷ “Treble damages” are damages provided by statute in certain cases found by a jury, where the damages to be paid are triple the amount of damage actually caused.⁸

Punitive damages

In any civil action, no claim for punitive damages is permitted unless there is a reasonable showing by evidence in the record, or proffered by the claimant, which would provide a

⁶ Art. I, s. 21, FLA. CONST.

⁷ “Civil Liability,” Black’s Law Dictionary 435 (9th ed. 2009).

⁸ “Treble Damages,” Black’s Law Dictionary 435 (9th ed. 2009).

reasonable basis for recovery of such damages.⁹ A defendant may only be held liable for punitive damages if the trier of fact finds the defendant was personally guilty of intentional misconduct¹⁰ or gross negligence.^{11,12} Punitive damages may not exceed the greater of:

- Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
- The sum of \$500,000.¹³

If the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain the court may award an amount of punitive damages not to exceed the greater of:

- Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
- The sum of \$2 million.¹⁴

If the fact finder determines that, at the time of injury, the defendant had a specific intent to harm the claimant and the defendant's conduct did in fact harm the claimant, then there shall be no cap on punitive damages.¹⁵

Monuments

Section 265.111, F.S., defines "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history.

III. Effect of Proposed Changes:

Section 1 creates the "Historical Monuments and Memorials Protection Act."

Section 2 amends s. 265.283, F.S., to define a "memorial" as a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that:

- Is constructed, placed or located with the intent of being permanently displayed or perpetually maintained;
- Is dedicated to a historical person, entity, event, or series of events; and
- Honors or recounts:
 - The military service of any past or present military personnel; or
 - The past or present public service of a resident of the geographical area comprising this state or the United States of America.

⁹ Section 768.72(1), F.S.

¹⁰ "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage. Section 768.72(2)(a), F.S.

¹¹ "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. Section 768.72(2)(b), F.S.

¹² Section 768.72(2), F.S.

¹³ Section 768.72(1)(a), F.S.

¹⁴ Section 768.73(1)(b), F.S.

¹⁵ Section 768.73(1)(c), F.S.

Section 3 creates s. 265.710, F.S., to allow a civil action against a person or entity that damages, defaces, destroys, or removes a monument or memorial that is displayed on publically owned property or for willfully and maliciously destroying or demolishing a memorial or historic property. The person or entity who commits such act may be liable for three times the full cost to return, repair, or replace the monument or memorial, and may be subject to punitive damages; unless the person or entity was authorized to alter, move, repair, or replace the monument or memorial by the public entity that owns it.

A person may be found guilty of a criminal and civil violation based on the same underlying facts. Therefore, a person or entity who damages, defaces, destroys, or removes a monument or memorial may be subject to both a criminal penalty and restitution pursuant to s. 806.135, F.S., and the civil penalties imposed pursuant to this bill.

Section 3 grants any public entity that owns a monument or memorial (not necessarily the monument or memorial damaged, defaced, destroyed, or removed), any legal resident of this state, or any entity whose purpose is historic preservation the right to bring a civil action for damages in the circuit court in the county in which the monument or memorial was damaged, defaced, destroyed, or removed or for any act prohibited by s. 806.135, F.S. Since the persons granted standing by this bill are representing the interests of the owner of the monument or memorial, any civil damages awarded in the litigation should be paid to the property owner rather than the party bringing the action under this section.

Section 3 does not prevent an agency from relocating a monument or memorial when relocation is necessary for the construction, expansion, or alteration of any publicly owned building, roads, streets, highways, or other transportation projects. Section 3 requires that the monument or memorial that is relocated must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality as its original placement.

Section 3 requires any plaque, sign, picture, notice or any other object used to convey information must have written approval by the Secretary of State before being placed on or near a monument or memorial in existence on or before January 1, 2022.

Section 4 provides the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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:

None.

C. Government Sector Impact:

The Department of State may incur workload costs associated with any requests to place a plaque, sign, picture, notice, or any other object used to convey information on or near a monument or memorial in existence before January 2, 2022. This increased workload should be absorbed within current agency resources.

VI. Technical Deficiencies:

The bill does not define the term “monument,” consideration should be given to providing a definition since treble and punitive damages may apply in some instances.

VII. Related Issues:

Lines 109 through 113 makes a person or entity liable for treble damages and punitive damages for any act that damages, defaces, destroys, or removes certain monuments or memorials. This liability does not distinguish between negligent acts and intentional acts. Typically, Florida law imposes treble or punitive damages when the act is criminal, or performed with knowledge or intention. This bill appears to subject a negligent act to treble damages.

Lines 113 through 115 provides an exception to a party’s punitive liability if the public entity owning the monument or memorial authorized certain actions. This exception to punitive damages suggests that even a person or entity authorized to alter, move, repair, or replace the monument or memorial may be liable for treble damages (rather than actual damages) if the person or entity (regardless of intent) damages, defaces, destroys, or removes a monument or memorial. In most instances, such damages would be addressed in a contract between the parties.

Lines 126 through 129 requires a monument or memorial to be relocated to certain types of locations. If the memorial or monument is owned by a private party, this requirement may infringe upon the property owner's rights of possession. This may be deemed a "taking" by the government and be subject to "just compensation."

Lines 130 through 133 require express written approval by the Secretary of State prior to a plaque, sign, picture, notice, or any other object used to convey information being placed on or near a monument or memorial in existence before January 2, 2022. Monuments and memorial are not necessarily owned by governmental entities, nor are they necessarily located on public property, so this requirement may infringe upon the rights of the owner or the property owner.

Moreover, monuments and memorials are typically located in parks and other public places. These parks and public areas may be deemed "public forums" for free speech considerations. Thus, the requirement of the Secretary of State's approval may infringe upon a citizen's free speech rights.

VIII. Statutes Affected:

This bill substantially amends section 265.283 of the Florida Statutes.

This bill creates section 265.710 of the Florida Statutes.

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.