

**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 1816

INTRODUCER: Senator McClain

SUBJECT: Protection of Historic Monuments and Memorials

DATE: March 24, 2025

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

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

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**I. Summary:**

SB 1816 creates the Historic Florida Monuments and Memorials Protection Act to prevent the removal, damage, or destruction of a monument or memorial located on public property which has been displayed for at least 25 years with the intent of being displayed permanently.

For purposes of this Act, “historic Florida monument or memorial” must:

- Be a permanent statue, marker, plaque, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, or display;
- Be located on public property;
- Have been displayed for at least 25 years; and
- Be dedicated to a person, place or event that was important in the past or which is in remembrance or recognition of a significant person or event in state history.

The bill declares void all existing, and preempts to state control any future, local government rule, ordinance, or regulation regarding the removal, damage, or destruction of “historic Florida monuments or memorials.” For purposes of this law, the term local government includes a city, county, a school district, a state college, a state university, or other political subdivision of the state.

A local government or elected or appointed local government official that enacts or enforces an ordinance, regulation, or rule that impinges on the state preemption of this issue is subject to a permanent injunction prohibiting enforcement of the action and a civil fine of up to \$1,000 for the knowing and willful violation.

Additionally, a private individual with specified interests in an affected historic Florida monument or memorial may bring a separate suit against a local government or elected or appointed local government official to seek declaratory or injunctive relief for actual damages and attorney fees and costs, not to exceed \$100,000, caused by enactment or enforcement of an

ordinance, rule, or regulation regarding the removal, damage, or destruction of an historic Florida monument or memorial.

Any local government that seeks to relocate an historic Florida monument or memorial may only do so temporarily as a result of military necessity, construction, or an infrastructure project. The local government must submit notice of such a decision to the Department of State's Division of Historical Resources and place a good faith estimate of the funds necessary to relocate the monument or memorial into an escrow account.

If the local government permanently removes, damages, or destroys a monument or memorial, then the state must pay to restore or relocate the monument or memorial and withhold arts, cultural, and historic funding from the local government until it has reimbursed the state's costs.

The bill grants rulemaking authority to the Department of State, in consultation with the Department of Veterans' Affairs.

The bill will likely have an indeterminate impact on state and local government expenditures related to the relocation of historic Florida monuments and memorials.

The bill takes effect July 1, 2025.

## **II. Present Situation:**

### **Department of State**

The Department of State (DOS), created by s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Arts and Culture, and Administration. The head of the DOS is the Secretary of State (Secretary). The Secretary is appointed by and serves at the pleasure of the Governor, and is confirmed by the Senate.

### **Division of Historical Resources: Chapter 267, F.S.**

The Division of Historical Resources (Division) within the DOS is charged with encouraging the identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.<sup>1</sup> This includes cooperating with federal and state agencies, local governments, and private entities to accomplish their duties.

The Division is comprised of the following Bureaus:

- Bureau of Historic Preservation;
- Bureau of Historical Museums; and
- Bureau of Archeological Research.<sup>2</sup>

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<sup>1</sup> Florida Department of State, Division of Historical Resources, *About*, <https://dos.fl.gov/historical/about/> (last visited Mar. 25, 2025). *See also*, s. 267.031, F.S.

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

The Florida Historical Resources Act<sup>3</sup> was established to preserve archaeological sites and objects of antiquity for the public benefit.<sup>4</sup> The Act recognizes Florida's historic properties as an important legacy to be valued and conserved for present and future generations. Accordingly, it is Florida's policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state's historic environment and resources.<sup>5</sup>

The Florida Historical Commission (Commission) is an advisory body that was created to enhance public participation and involvement in the preservation and protection of Florida's historic and archaeological sites and properties.<sup>6</sup>

The Commission's duties include providing assistance, advice, and recommendations to the Division of Historical Resources and its director for:

- Establishing priorities for the identification, acquisition, protection, and preservation of historic and archaeological sites and properties.
- Establishing criteria for use in assessing the significance of historic and archaeological sites.
- Evaluating proposals for historic preservation grants administered by the division.
- Providing an active outreach program to encourage public understanding of and involvement in the preservation of the state's historic and archaeological sites and properties.
- Identifying and expressing public goals for historic preservation and gathering public ideas necessary for the formulation of alternative policies.
- Recommending rules relating to the historic preservation programs administered by the division.
- Protecting and preserving Florida's historic and archaeological sites and properties.

Seven members of the Commission are appointed by the Governor in consultation with the Secretary of State, two by the President of the Senate, and two by the Speaker of the House of Representatives.<sup>7</sup> The Commission must include:

- A licensed architect with expertise in historic preservation and architectural history;
- A professional historian in the field of American history;
- A professional architectural historian;
- An archaeologist specializing in the field of prehistory;
- An archaeologist specializing in the historic period; and
- Representatives of the general public with demonstrated interest in the preservation of Florida's historical and archaeological heritage.<sup>8</sup>

Any action taken by the Commission requires a majority vote of the members present at its meeting.<sup>9</sup>

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<sup>3</sup> Sections 267.011-267.1736, F.S.

<sup>4</sup> Section 267.14, F.S.

<sup>5</sup> Section 267.061(2)(a), F.S.

<sup>6</sup> Section 267.0612(2), F.S.

<sup>7</sup> Section 267.0612(1)(a)1., F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 267.0612(5), F.S.

### ***Florida Historical Marker Program***

The Florida Historical Marker Program is designed to raise public awareness of Florida's cultural history and to enhance the enjoyment of its historic sites by citizens and tourists. These markers tell stories of the places and people who created Florida, by identifying the churches, schools, archaeological sites, battlefields, and homes that represent Florida's past.<sup>10</sup> The official Florida historic markers are markers awarded, approved, or administered by the Division.<sup>11</sup> A "Florida Heritage" marker is a one that identifies people, events, and places, including buildings, structures, objects, and archaeological sites that are of local, regional, or statewide historic significance relating to Florida history, culture, or ethnic heritage.<sup>12</sup>

The Division is responsible for the administration of all aspects of the Florida Historic Marker Program, including the application process, selection and designation of properties, persons or events to be marked and the placement and maintenance of the markers.<sup>13</sup> There are approximately 1,200 markers throughout the state currently.<sup>14</sup>

### **Criminal Penalty for Destruction of a Memorial**

Section 806.135, F.S., provides that it is a second-degree felony<sup>15</sup> for any person to willfully and maliciously destroy or demolish any memorial or historic property, or to 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; 1A
- POW-MIA Chair of Honor Memorial;
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden; and
- Florida Law Enforcement Officers' Hall of Fame;

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<sup>10</sup> Florida Department of State, Florida Division of Historical Resources, *Historical Markers*, <https://dos.fl.gov/historical/preservation/historical-markers/> (last visited Mar. 21, 2025).

<sup>11</sup> Rule 1A-48.002(3), Fla. Admin. Code

<sup>12</sup> Rule 1A-48.002(3)(b), Fla. Admin. Code

<sup>13</sup> Rule 1A-48.003(1), Fla. Admin. Code

<sup>14</sup> Florida Department of State, *Florida Historical Marker List*, <https://apps.flheritage.com/markers/> (last visited Mar. 21, 2025).

<sup>15</sup> 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 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.

## 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.

As of 2022, at least 15 Confederate memorials, statutes, or plaques in Florida have been removed or relocated by local governments.<sup>16</sup> The cities and counties of Jacksonville, Orlando, St. Augustine, Hillsborough, Madison, Marion, and Bradenton are a few of the local governments to recently take actions to remove or relocate confederate monuments in recent years.<sup>17</sup>

## Department of Veterans’ Affairs

The Department of Veterans’ Affairs’ existence is mandated by article IV, section 11 of the Florida Constitution, and the entity created by statute.<sup>18</sup> The Department of Veterans’ Affairs is charged with providing “assistance to all former, present, and future members of the Armed Forces of the United States and their spouses and dependents in preparing claims for and securing such compensation, hospitalization, career training, and other benefits or privileges.”<sup>19</sup> Within the Department are three divisions—the Divisions of Administration and Public Information, Veterans’ Benefits and Assistance, and Long-term Care.<sup>20</sup> The Department of Veterans’ Affairs works with the Department of Transportation to contract with non-for-profit groups for the installation of monuments and memorials honoring Florida’s military veterans at highway rest areas around the state.<sup>21</sup>

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<sup>16</sup> C.A. Bridges, the Florida Times-Union, *How many Confederate memorials have been removed in Florida? How many are left?* (Dec. 6, 2022), <https://www.jacksonville.com/story/news/state/2022/12/06/confederate-monuments-florida-how-many-have-been-taken-down/10839211002/> (last visited Mar. 21, 2025).

<sup>17</sup> *Id.*; Michelle McGhee & Selene San Felice, Axois Tampa Bay, *Where Confederate monuments remain across Florida* (May 6, 2021), <https://www.axios.com/local/tampa-bay/2021/05/06/confederate-monuments-in-florida-over-time-map> (last visited Nov. 26, 2024); Michael Paluska, ABC Action News, *Process begins to remove Confederate statue from downtown Tampa* (Aug. 15, 2017), <https://www.abcactionnews.com/news/local-news/process-begins-to-remove-confederate-statue-from-downtown-tampa> (last visited Mar. 21, 2025).

<sup>18</sup> Section 20.37, F.S.

<sup>19</sup> Section 292.05, F.S.

<sup>20</sup> Section 20.37(2), F.S.

<sup>21</sup> Section 337.111(a), F.S.

## 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:

(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.”<sup>22</sup> In most instances, the aggrieved party is limited to sue for the actual damages incurred.<sup>23</sup>

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.”<sup>24</sup>

### *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 reasonable basis for recovery of such damages.<sup>25</sup> A defendant may only be held liable for punitive damages if the trier of fact finds the defendant was personally guilty of intentional misconduct<sup>26</sup> or gross negligence.<sup>27,28</sup> Punitive damages may not exceed the greater of:

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<sup>22</sup> FLA. CONST. art. I, s. 21.

<sup>23</sup> See, e.g., *Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So.3d 261, 282 (Fla. 2013).

<sup>24</sup> “Civil Liability,” Black’s Law Dictionary 435 (9th ed. 2009).

<sup>25</sup> Section 768.72(1), F.S.

<sup>26</sup> “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.

<sup>27</sup> “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.

<sup>28</sup> Section 768.72(2), F.S.

- 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.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup>

### Local Government Powers

The Florida Constitution grants counties and municipalities broad “home rule” authority that did not exist prior to the ratification of the 1968 Constitution.<sup>32</sup> Non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>33</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>34</sup> Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.<sup>35</sup>

### Immunity for Official Conduct

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts.<sup>36</sup> Absolute immunity for legislators has historically been recognized as a “venerable tradition” that has withstood the development of the law since pre-colonial days.<sup>37</sup> Courts have upheld absolute immunity for legislators at all levels of lawmaking,

<sup>29</sup> Section 768.72(1)(a), F.S.

<sup>30</sup> Section 768.73(1)(b), F.S.

<sup>31</sup> Section 768.73(1)(c), F.S.

<sup>32</sup> See, FLA. CONST. art. VIII, s. 5 (1885) (“powers, duties[,] and compensation of county commissioners shall be prescribed by law”) and FLA. CONST. art. VIII, s. 8 (1885) (“The Legislature shall... prescribe [municipal] jurisdiction and powers[.]” See also, *City of Trenton v. State of New Jersey*, 262 U.S. 182, 186 (1923) (“In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state.”), *Bowden v. Ricker*, 70 Fla. 154 (Fla. 1915) (“Under the provision of s. 5 of art. 8 of the [1885] Constitution that powers and duties of county commissioners ‘shall be prescribed by law,’ the authority of such officials is only such as may be conferred by statutory regulations.”)

<sup>33</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>34</sup> FLA. CONST. art. VIII, s. 1(g).

<sup>35</sup> FLA. CONST. art. VIII, s. 2(b); see also s. 166.021(1), F.S.

<sup>36</sup> See *Tenney v. Brandhove*, 341 U.S. 367 (1951).

<sup>37</sup> *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Lake Country Estates v. Tahoe Regional Planning*

including federal, state, and local government levels.<sup>38</sup> The courts' reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers.<sup>39</sup> Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen legislators, and deter service in local government.<sup>40</sup>

When unlawful ordinances have been enacted, the freedom from personal liability does not make the legislative product itself valid.<sup>41</sup> In such instances, affected citizens have been able to challenge the validity of such ordinances by suing to have them declared invalid or have a court enjoin enforcement.<sup>42</sup>

Courts have found that legislators may be subject to personal liability when they lack discretion.<sup>43</sup> Such situations typically exist when legislators are subject to an affirmative duty, such as when a law or court order has directed them to levy a tax. Such acts are labeled "ministerial," as opposed to "legislative," acts.<sup>44</sup> Arguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field.

### III. Effect of Proposed Changes:

**Section 1** designates the provisions of the bill as the "Historic Florida Monuments and Memorials Protection Act."

#### Definitions

**Section 2** defines the following terms:

- "Historic Florida military monument or memorial" means a historic Florida monument or memorial that honors or recounts the military service of any past or present military personnel, including any armed conflict since settlers from other countries came to what is now the United States."
- "Historic Florida monument or memorial" means a permanent statute, marker, plaque, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, or display constructed and located on public property *which has been displayed for at least 25 years*, with the intent of being permanently displayed or perpetually maintained and which is dedicated to any person, place, or event that was important in the past or which is in remembrance or recognition of a significant person or event in state history."

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Agency, 440 U.S. 391 (1979); *Hough v. Amato*, 269 So. 2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930).

<sup>38</sup> *Bogan*, 523 U.S. 44.

<sup>39</sup> *Id.* at 50-51 (citing *Jones*, 55 Miss. 109).

<sup>40</sup> *Id.* at 52.

<sup>41</sup> *Tenney*, 341 U.S. at 379.

<sup>42</sup> See, e.g., *Bogan*, 523 U.S. 44; *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367.

<sup>43</sup> *Bogan*, 523 U.S. at 51-52.

<sup>44</sup> See *Id.*



- A “local government” means any municipality, county, school district, *state college*, *state university*, or other political subdivision of the state.

This definition of a local government includes state colleges and state universities, which is not generally included in other statutory definitions of the term.<sup>45</sup>

### **Preemption of Local Authority and Related Duties and Limitations**

**Section 2** preempts to the state all removal, damage, or destruction of historic Florida monuments or memorials and declares void all existing or future local government ordinances, regulations, rules, and executive actions regarding the removal, damage, or destruction of historic Florida monuments or memorials.

The bill further provides legislative intent that the state act to provide uniformity in the context of the protection of each historic Florida monument or memorial from removal, damage or destruction. It provides that “accurate and factual history belongs to all Floridians and future generations and that the state has an obligation to protect and preserve such history.”

The bill prohibits a local government’s removal of a historic Florida monument or memorial, unless for a temporary purpose, military necessity, or for any construction or infrastructure project. If such a relocation is required, the monument or memorial must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality as its original location, as determined by the DOS in consultation with the Florida Historical Commission or Department of Veterans’ Affairs.

A local government that seeks to temporarily relocate a Florida historic monument or memorial must:

- Place a good faith estimate of the funds necessary to relocate it into an escrow account; and
- Provide written notice to the Division on a form prescribed by the DOS of:
  - The decision to temporarily remove the monument or memorial, which must occur within 10 days after the decision to do so; and
  - The date of the cessation or completion of the military necessity, construction or infrastructure project. This notice must be submitted in a reasonable timeframe, not to exceed 30 days from the cessation or completion.

Additionally, the bill provides that the division shall “take any issue regarding the protection, preservation, or relocation of a historic Florida monument or memorial to the Florida Historical Commission, or...[for a military monument or memorial] to the Department of Veterans’ Affairs”. The Division must determine whether to take action, defer making a decision, or not to make a decision, and document such decision and the reasons therefore in writing. This provision appears to require any determination relating to the protection, preservation, or relocation of a monument or memorial to be made by the DOS. Such determinations could include how often to paint the memorial, whether to engage in a costly restoration, and where to place the monument if it must be relocated.

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<sup>45</sup> See, e.g., ss. 119.0713, 161.021, 161.3173 (read in concert with s. 163.3171), 171.202, and 287.05701, F.S.

## **Civil Penalties and Related Liabilities**

**Section 2** prohibits and civilly penalizes a local government, local government elected official, or local government appointed official's enactment or enforcement of an ordinance, regulation, or rule that "impinges on" the state's preemption of the removal, damage, or destruction of historic Florida monuments or memorials.

If a court finds that a local government has violated the above prohibition, it must (1) declare the ordinance, regulation, or rule invalid, and (2) issue a permanent injunction against the local government which prohibits enforcement of the law. The bill applies strict liability and excludes as a defense that the local government acted in good faith or upon the advice of counsel when it enacted or enforced a law in violation of the above prohibition.

Conversely, a court is required only to assess a civil fine of up to \$1,000 against an elected or appointed local government official who knowingly and willfully enacted or enforced the law in violation of the above prohibition.

A separate suit may be brought against a local government or elected or appointed local government official to seek declaratory or injunctive relief, and for actual damages caused by a violation of the above prohibition. The suit must be initiated by one of the following:

- A group involved in the design, erection, or care of the monument or memorial, or a member of this group; or
- A group or person who regularly uses the monument or memorial for remembrance.

The court must award the prevailing plaintiff reasonable attorney fees and costs and the actual damages incurred (not to exceed \$100,000).

If a local government enacts or enforces a local ordinance, regulation, or rule which results in the removal, damage, or destruction of an historic Florida monument or memorial in conflict with the state's preemption of such matters, then the local government is liable for the costs relating to the restoration or relocation of the monument or memorial to its original condition or location within 3 years of the date of its removal, damage, or destruction. If it cannot pay those costs, then the state must act to restore or relocate the monument or memorial, and withhold any DOS arts, cultural, or historic preservation funds from the local government until the local government is able to reimburse the costs to the state.

## **Rulemaking**

The bill grants rulemaking authority to the DOS, in consultation with the Department of Veterans' Affairs, to implement the bill.

## **Effective Date**

The bill takes effect July 1, 2025.

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

The county and municipality mandate provisions of Article VII, section 18 of the Florida Constitution may apply because the bill may require local governments to expend funds in the form of damages awarded by a court for a local government's or elected or appointed local government official's enforcement or enactment of a rule, regulation, or ordinance that removed, damaged, or destroyed monuments and memorials before the passage of this bill. Additionally, the bill may require local governments to maintain historic Florida monuments or memorials in a condition above and beyond what they are able to afford. In such instance, the state must perform the upkeep and bill the local government, withholding arts, cultural, and historic preservation funding from the local government until it is able to afford to pay back the state for the upkeep.

Article VII, section 18 (d) provides eight exemptions, which, if any single one is met, exempts the law from the limitations on mandates. Laws having an "insignificant fiscal impact" are exempt from the mandate requirements, which for Fiscal Year 2024-2025 is forecast at approximately \$2.3 million.<sup>29,30</sup> However, any local government costs associated with the bill are speculative and not readily estimable for purposes of determining whether the exemption for bills having an insignificant fiscal impact applies. If the bill does qualify as a mandate, in order to be binding upon cities and counties, the bill must contain a finding of important state interest and be approved by a two-thirds vote of the membership of each house. None of the constitutional exceptions appear to apply.

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

None identified.

**C. Trust Funds Restrictions:**

None identified.

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

None identified.

**E. Other Constitutional Issues:**Dual Office Holding

The Florida Constitution prohibits dual office holding by forbidding a person who holds one office in Florida from holding another office at the same time.<sup>46</sup> The Constitution provides that those who serve as a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body that

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<sup>46</sup> FLA. CONST. art. II, s. 5.

has only advisory powers are excepted from this prohibition. The Florida Historical Commission is currently an advisory body. If it takes on duties that influence the DOS's decision making, it may no longer be considered an advisory body, and its members would be subject to the prohibition on dual office holding.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

A private individual or group may seek damages for the removal, damage, or relocation of an historic Florida monument or memorial.

**C. Government Sector Impact:**

Government officials and local governments who violate the prohibitions in the bill face fines. Creating significant penalties on government officials for making policy decisions or carrying out invalid regulations or ordinances may deter public service.

Local governments may be required to pay additional funds to maintain their historic Florida monuments or memorials in better condition than they otherwise planned.

The Department of State may incur several costs related to the implementation and carrying out of the bill. In particular, the Department may see an increase in administrative costs relating to the:

- Development of a rule to adopt a form for the local government reporting of determinations to relocate a monument or memorial as a result of construction, military necessity, or infrastructure project.
- Maintenance of records relating to its determinations on any issue regarding the protection, preservation, or relocation of an historic Florida monument or memorial.
- Increased need for meetings of the Florida Historical Commission to determine permissible actions relating to historic Florida monuments or memorials.

The Department of Veterans' Affairs may see an increase in workload relating to duties added by the bill.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:****Retroactive Application**

Absent an express statement of legislative intent, a statute is presumed to operate only prospectively, not retroactively.<sup>47</sup> While the Legislature may pass a non-criminal law and expressly manifest its intent that it be applied retroactively, the law may still be held unconstitutional if its retroactive application impermissibly burdens existing constitutional rights.<sup>48</sup>

The bill appears to apply make a local government liable for the removal, damage, or destruction and require that the local government restore or relocate the monument or memorial within 3 years of the damage. This may have the effect of penalizing a local government's action that occurred before the effective date of this bill. As a result, this may be found to be a retroactive application of the law.

**VIII. Statutes Affected:**

This bill creates section 267.201 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.

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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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<sup>47</sup> *Fla. Ins. Guar. Ass'n., Inc. v. Devon Neighborhood Ass'n. Inc.*, 67 So.3d 187, 194-95 (Fla. 2011).

<sup>48</sup> *See Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010) (“[E]ven where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty.”).