

By Senator McClain

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A bill to be entitled

An act relating to protection of historic monuments and memorials; providing a short title; creating s. 267.201, F.S.; defining terms; providing legislative intent and findings; preempting all removal, damage to, or destruction of historic Florida monuments and memorials; providing that any existing or future ordinance, regulation, or rule to the contrary, and certain actions by elected or appointed local government officials, are void; prohibiting local governments from enacting or enforcing specified ordinances, regulations, or rules; providing that local governments and elected or appointed local government officials who violate the preemption are liable; requiring the court to declare certain ordinances, regulations, or rules invalid and issue permanent injunctions against the local government; providing that it is no defense that a local government was acting in good faith or upon the advice of counsel; providing civil penalties for certain officials who engage in certain actions; prohibiting the use of public funds to defend or reimburse unlawful conduct of certain persons; authorizing specified persons and organizations to file suit against specified entities for declaratory or injunctive relief and actual damages; requiring the court to award prevailing plaintiffs specified fees and damages; providing for standing to bring civil actions; providing that a local government is liable

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in certain instances; requiring the state to restore or relocate a monument or memorial in certain circumstances within a specified timeframe; requiring the Department of State to withhold certain funding from a local government until a certain reimbursement is made; prohibiting the local government from retroactively receiving such funding; authorizing a local government to temporarily remove and relocate a monument or memorial in certain instances provided certain requirements are met; authorizing the Division of Historical Resources of the Department of State to request certain recommendations from the Florida Historical Commission and the Department of Veterans' Affairs; requiring the division to make a written record of its decision; prohibiting the division from requiring local governments to expend funds unrelated to specified circumstances; authorizing the department to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Historic Florida Monuments and Memorials Protection Act."

Section 2. Section 267.201, Florida Statutes, is created to read:

267.201 Protection of historic monuments and memorials.—

(1) As used in this section, the term:

(a) "Department" means the Department of State.

(b) "Historic Florida military monument or memorial" means

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59 a historic Florida monument or memorial that honors or recounts
60 the military service of any past or present military personnel,
61 including service in any armed conflict since settlers from
62 other countries came to what is now the United States.

63 (c) "Historic Florida monument or memorial" means a
64 permanent statue, marker, plaque, flag, banner, cenotaph,
65 religious symbol, painting, seal, tombstone, or display
66 constructed and located on public property which has been
67 displayed for at least 25 years, with the intent of being
68 permanently displayed or perpetually maintained, and which is
69 dedicated to any person, place, or event that was important in
70 the past or which is in remembrance or recognition of a
71 significant person or event in state history.

72 (d) "Local government" means any municipality, county,
73 school district, state college, state university, or other
74 political subdivision of the state.

75 (2)(a) It is the intent of the Legislature to declare void
76 all ordinances, regulations, and executive actions regarding the
77 removal, damage, or destruction of historic Florida monuments or
78 memorials which have been enacted by any local government.

79 (b) It is also the intent of the Legislature that the state
80 act to protect each historic Florida monument or memorial from
81 removal, damage, or destruction. The Legislature finds that an
82 accurate and factual history belongs to all Floridians and
83 future generations and that the state has an obligation to
84 protect and preserve such history.

85 (c) Further, it is the intent of the Legislature to provide
86 statewide uniformity through the division. It is also the
87 Legislature's intent for the division to work actively to

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88 protect and preserve each historic Florida monument or memorial
89 and ensure that each such monument or memorial is not removed,
90 damaged, or destroyed, regardless of the location of such
91 monument or memorial in this state, and to consult with the
92 Department of Veterans' Affairs on actions regarding all
93 historic Florida military monuments or memorials.

94 (3) (a) Any removal of, damage to, or destruction of
95 historic Florida monuments or memorials is preempted to the
96 state. Any existing or future local government ordinance,
97 regulation, or rule to the contrary, or any such action by an
98 elected or appointed local government official, other than those
99 authorized in subsection (6), is void.

100 (b) A local government may not enact or enforce any local
101 ordinance, regulation, or rule removing or destroying a historic
102 Florida monument or memorial.

103 (4) (a) A local government or an elected or appointed local
104 government official who violates subsection (3) by enacting or
105 enforcing a local ordinance, regulation, or rule impinging upon
106 such preemption is liable as provided in this subsection.

107 (b) If a local government violates subsection (3), the
108 court must declare the ordinance, regulation, or rule invalid
109 and issue a permanent injunction against the local government,
110 prohibiting the enforcement of such ordinance, regulation, or
111 rule. It is not a defense that, in enacting or enforcing the
112 ordinance, regulation, or rule, the local government was acting
113 in good faith or upon the advice of counsel.

114 (c) The court shall assess a civil fine of up to \$1,000
115 against an elected or appointed local government official who
116 knowingly and willfully violates subsection (3).

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117 (d) Except as required by applicable law, public funds may
118 not be used to defend or reimburse the unlawful conduct of an
119 elected or appointed local government official found to have
120 knowingly and willfully violated subsection (3).

121 (e)1. A person or an organization described in subparagraph
122 2. may file suit against a local government or an elected or
123 appointed local government official in any court of this state
124 having jurisdiction over the defendant to the suit for
125 declaratory or injunctive relief and for actual damages, as
126 limited herein, caused by a violation. A court shall award a
127 prevailing plaintiff in any such suit:

128 a. Reasonable attorney fees and costs in accordance with
129 the laws of this state; and

130 b. The actual damages incurred, up to \$100,000.

131 2. The following have standing to bring a civil action for
132 a violation of subsection (3):

133 a. A group involved in the design, erection, or maintenance
134 of the monument or memorial or a member of such group; or

135 b. A group or person regularly using the monument or
136 memorial for remembrance.

137 (5) If a historic Florida monument or memorial is removed,
138 damaged, or destroyed by a local government in violation of
139 subsection (3), the local government is liable for restoring or
140 relocating such monument or memorial to its original condition
141 or location or as close as possible to the original condition or
142 location within 3 years after the date of the removal, damage,
143 or destruction. If the local government does not have the
144 necessary funds for the restoration or relocation, the state
145 must restore or relocate such monument or memorial, and the

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department must withhold from the local government all arts, cultural, and historic preservation funding until the local government reimburses the state for the cost of restoring or relocating such monument or memorial. All such funds become available to the local government once the state is repaid. The local government may not retroactively collect any of the department funds that otherwise would have been received during the period that state funds were withheld.

(6) (a) A local government may temporarily remove and relocate a historic Florida monument or memorial only due to military necessity or for any construction or infrastructure project.

(b) The local government proposing to remove and relocate a Florida historic monument or memorial shall put into an escrow account a good faith estimate of the funds necessary to temporarily relocate such monument or memorial.

(c) A historic Florida monument or memorial that is temporarily removed must be moved to a site of similar prominence, honor, visibility, and access within the same county or municipality in which the monument or memorial was originally located.

(d) 1. A local government shall provide written notification to the division, on a form prescribed by the department in consultation with the Department of Veterans' Affairs:

a. Of the temporary removal and relocation of a historic Florida monument or memorial. The written notification must be provided within 10 days after the date of the local government's decision to temporarily remove such monument or memorial.

b. That the military necessity has ceased or that the

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175 construction or infrastructure project is completed. The written
176 notification must be provided within a reasonable timeframe, but
177 not more than 30 days after the military necessity has ceased or
178 the construction or infrastructure project has been completed.

179 2. The historic Florida monument or memorial must be moved
180 back to the original location or, if that is not possible, to a
181 site with similar prominence, honor, visibility, and access
182 within the same county or municipality, as determined by the
183 division. The division may request recommendations for such
184 locations from the Florida Historical Commission or, for a
185 historic Florida military monument or memorial, from the
186 Department of Veterans' Affairs.

187 (7) The division shall make a written record of its
188 decision to act or defer action on any issue regarding the
189 protection, preservation, or relocation of a historic Florida
190 monument or memorial. The division may not require a local
191 government to expend funds on a historic Florida monument or
192 memorial in instances unrelated to subsection (5) or subsection
193 (6).

194 (8) The department, in consultation with the Department of
195 Veterans' Affairs, may adopt rules to implement this section.

196 Section 3. This act shall take effect upon becoming a law.