

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 Community Affairs

BILL: SB 1122

INTRODUCER: Senator Martin

SUBJECT: Protection of Historical Monuments and Memorials

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1122 creates the Historical Monuments and Memorials Protection Act.

The bill subjects any person or entity that, without proper authorization, takes or removes a monument or memorial that is on publicly owned property to civil liability. Similarly, it subjects a person or entity that violates s. 806.135, F.S., by willfully and maliciously destroying or demolishing a memorial or historic property to civil liability.

The bill preempts local government actions that may relocate, remove, damage, or destroy a monument or memorial. The Secretary of State, the State Historic Preservation Officer, and the executive director of the Department of Veterans' Affairs (DVA) are vested with the responsibility to ensure that each monument or memorial is not removed, damaged, or destroyed, regardless of its location in the state. These officers may have exclusive authority to place a contextual marker or plaque near a monument or memorial.

The Florida Historical Commission, at the bequest of either the State Historic Preservation Officer or the executive director of the DVA, for military monuments, have authority to make any determination regarding the protection or preservation of a monument or memorial. These decisions must be made at an open meeting at which the vote and any record must be documented and reported on the Department of State's website within 30 days of the action.

A local government that removes, damages, or destroys a monument or memorial is subject to liability for restoration of the monument or memorial. If it lacks the funds to do so, the State must restore the monument or memorial and withhold all arts, cultural, and historic preservation funding from the local government until reimbursement is made. Another provision of the bill requires a local government that seeks to remove, damage, or destroy a monument or memorial to place a good faith estimate of the funds needed to replace the monument or memorial in an escrow account.

Additionally, any local government official, agent, or member who directs, assists, facilitates, or votes to remove or destroy a monument or memorial is subject to a civil penalty. If a local government elected official who, while acting in his or her official capacity, knowingly and willfully violates the provisions of this bill, he or she may be subject to suspension or removal from office by the Governor.

Any local government that seeks to relocate a monument or memorial may only do so temporarily, as a result of construction, expansion, or alteration of the property on which the monument or memorial is sited. They must follow specific procedures to do so, including:

- Providing notice to the State Historic Preservation Officer of the removal and replacement of the monument or memorial;
- Returning the monument or memorial within a reasonable time, but not more than 12 months after the construction project is complete; and
- If it is impossible to return the monument or memorial to its original location, returning it to a prominent place, as close as possible to the original location, within the same county or municipality in which it was originally located, that provides similar prominence, honor, visibility, and access.

The bill will likely have an indeterminate impact on state and local government expenditures related to the preservation, removal, or destruction of monuments and memorials.

The bill takes effect July 1, 2024.

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.

Memorials, Museums, Arts, and Culture: Chapter 265, F.S. and Division of State Arts and Culture

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 and culture (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 and antiquities.³ The Division also sponsors and promotes performances

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.

and exhibits, conducts cultural programs and exchanges, and accepts funding and support for its purposes.⁴

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

The Division of Historical Resources within the Department of State 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.⁵ 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.⁶

The Florida Historical Resources Act⁷ was established to preserve archaeological sites and objects of antiquity for the public benefit.⁸ 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.⁹

The Florida Historical Commission (Commission) was created to enhance public participation and involvement in the preservation and protection of Florida's historic and archaeological sites and properties. The Commission's membership must include a licensed architect with historic preservation and architectural history expertise; a professional American historian; an architectural historian; a prehistoric archaeologist; and an historic archaeologist.¹⁰

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.

⁴ *Id.*

⁵ Florida Department of State, Division of Historical Resources, *About*, <https://dos.fl.gov/historical/about/> (last visited Jan. 19, 2024). *See also*, s. 267.031, F.S.

⁶ *Id.*

⁷ Sections 267.011-267.1736, F.S.

⁸ Section 267.14, F.S.

⁹ Section 267.061(2)(a), F.S.

¹⁰ Section 267.0612(2), F.S.

- Recommending rules relating to the historic preservation programs administered by the division.
- Protecting and preserving Florida’s historic and archaeological sites and properties.

Any action taken by the Commission requires a majority vote of the members present at its meeting.¹¹

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.¹² The official Florida historic markers are markers awarded, approved, or administered by the Division.¹³ 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, and ethnic heritage.¹⁴

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.¹⁵ There are approximately 1,200 markers throughout the state currently.¹⁶ While the current list of Florida Historical Markers has all the approved and created markers, some have yet to be installed or have been removed without notice to the Bureau of Historic Preservation.¹⁷

Criminal Penalty for Destruction of a Memorial

Section 806.135, F.S., provides that it is a second degree felony¹⁸ 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

¹¹ Section 267.0612(5), F.S.

¹² Florida Department of State, Florida Division of Historical Resources, *Historical Markers*, <https://dos.fl.gov/historical/preservation/historical-markers/> (last visited Jan. 16, 2024).

¹³ Rule 1A-48.002(3), Fla. Admin. Code

¹⁴ Rule 1A-48.002(3)(b), Fla. Admin. Code

¹⁵ Rule 1A-48.003(1), Fla. Admin. Code

¹⁶ Florida Department of State, *Florida Historical Marker List*, <https://apps.flheritage.com/markers/> (Jan. 16, 2023).

¹⁷ Email from Jeremy Heiker, Florida Historical Marker Coordinator, Department of State, to Gabriela Limones-Borja, Legislative Analyst, Senate Committee on Governmental Oversight and Accountability (Jan. 16, 2024, 4:15 EST) (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁸ 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.

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;
- 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.

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.

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.”¹⁹ In most instances, the aggrieved party is limited to sue for the actual damages incurred.²⁰

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.”²¹

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.²² A defendant may only be held liable for punitive damages if the trier of fact finds the defendant was personally guilty of intentional misconduct²³ or gross negligence.^{24,25} 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 \$500,000.²⁶

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.²⁷

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.²⁸

¹⁹ FLA. CONST. art. I, s. 21.

²⁰ See, e.g., *Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So.3d 261, 282 (Fla. 2013).

²¹ “Civil Liability,” Black’s Law Dictionary 435 (9th ed. 2009).

²² Section 768.72(1), F.S.

²³ “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.

²⁴ “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.

²⁵ Section 768.72(2), F.S.

²⁶ Section 768.72(1)(a), F.S.

²⁷ Section 768.73(1)(b), F.S.

²⁸ Section 768.73(1)(c), F.S.

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.²⁹ Non-charter county governments may exercise those powers of self-government that are provided by general or special law.³⁰ 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.³¹ 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.³²

Immunity for Official Conduct

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts.³³ Absolute immunity for legislators has historically been recognized as a “venerable tradition” that has withstood the development of the law since pre-colonial days.³⁴ Courts have upheld absolute immunity for legislators at all levels of lawmaking, including federal, state, and local government levels.³⁵ 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.³⁶ 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.³⁷

When unlawful ordinances have been enacted, the freedom from personal liability does not make the legislative product itself valid.³⁸ 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.³⁹

²⁹ 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.”)

³⁰ FLA. CONST. art. VIII, s. 1(f).

³¹ FLA. CONST. art. VIII, s. 1(g).

³² FLA. CONST. art. VIII, s. 2(b); see also s. 166.021(1), F.S.

³³ See *Tenney v. Brandhove*, 341 U.S. 367 (1951).

³⁴ *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 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).

³⁵ *Bogan*, 523 U.S. 44.

³⁶ *Id.* at 50-51 (citing *Jones*, 55 Miss. 109).

³⁷ *Id.* at 52.

³⁸ *Tenney*, 341 U.S. at 379.

³⁹ 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.

Courts have found that legislators may be subject to personal liability when they lack discretion.⁴⁰ 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.⁴¹ 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 the “Historical Monuments and Memorials Protection Act.”

Definitions

The bill defines the following terms:

- “Historic” means persons, places, or events that were important in the past or that have continuing relevance in the present.
- A “local government” means any city, county, school district or other public educational institution, or any other political subdivision of the state and its agencies.
- A “memorial” is 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; and
 - Is dedicated to a historical person, entity, event, or series of events.
- A “military monument or memorial” includes a monument or memorial that features an historic person, entity, event, or series of events, and 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.
- A “monument” is a permanent structure, including a tree or other living plant, that was placed in remembrance or recognition of a significant person or event in state history.

General State Responsibilities Regarding Monuments and Memorials

Section 2 provides Legislative intent that Florida protect and preserve all historic monuments and memorials from removal, damage, or destruction. It further provides that “[a]ccurate history belongs to all Floridians in perpetuity.”

The Secretary of State is responsible for such care of nonmilitary Florida monuments and memorials, and the Department of Veterans’ Affairs (DVA) for military monuments and memorials. The Florida Historical Commission (Commission) must provide advice and counsel to the Secretary of State, the State Historic Preservation Officer, and the executive director of the DVA to ensure the monuments’ and memorials’ protection.

⁴⁰ *Bogan*, 523 U.S. at 51-52.

⁴¹ *See Id.*

The bill allows the Secretary of State or the executive director of the DVA, and the State Historic Preservation Officer, after consulting with the Commission, to place a contextual marker or plaque near a monument or memorial to provide a more accurate understanding of a monument or memorial.

The Commission must serve as venue for the any issue regarding the protection or preservation of a monument or memorial for the State Historic Preservation Officer and the executive director of the DVA. The Commission must authorize the action, defer a decision, or choose to not make a decision on the action. Should the Commission choose not to act, it must provide a basis for that decision. Additionally, the Commission meeting at which such determinations are made must record any vote taken and the basis for the decision. Similarly, the executive director of the DVA must make a written record of his or her recommendation regarding the protection or preservation of a monument or memorial. This requirement does not apply to the State Historic Preservation Officer.

The Commission is required to record each meeting, and make the record available for public inspection.⁴²

Section 3 amends s. 267.0612, F.S., to require the Commission to post the minutes of any of its meetings on the Division of Historical Resources' website within 30 days after the meeting. The Commission may label the minutes as "not yet adopted" or "draft" if they have not been finalized at the time of posting.

Section 4 vests with the Department of State (DOS) and the State Historic Preservation officer authority and responsibility to actively work to protect and preserve a monument or memorial that has the state seal, the name of the state, or a direct connection with state history.

Preemption of Local Authority and Related Limitations

Section 2 preempts a local government's authority to relocate a historical monument or memorial, permitting such action only temporarily, due to construction.⁴³ During the construction, the local government must relocate the monument or memorial to a site of similar prominence, honor, visibility, and access within the same county or municipality of its original location. The local government must restore the monument or memorial to its original location within 12 months of the construction project's completion. If it cannot be returned to its original location, the local government must consult with either the Commission, and for a military monument or memorial, the executive director of the DVA, to determine a location "as close as possible to the original location in a prominent place for easy and accessible public viewing" for the monument or memorial.

Section 4 also requires a local government that proposes to remove or destroy a monument or memorial to place a good-faith estimate of the value necessary to replace the monument or memorial into an escrow account. The local government must receive advice on the monument or memorial's relocation from the Florida Historical Commission, or the executive director of the

⁴² Section 286.011, F.S.

⁴³ See *infra*, "Relocation as a Result of Construction."

DVA for a military monument or memorial. Ultimately, the authority to determine whether to remove or destroy a local government's monument is vested with the Florida Historical Commission, as described above.

Civil Penalties and Related Liabilities

Section 4 creates s. 267.201, F.S., to prohibit, and civilly penalize, the taking or removal, without the owner's authorization, of a monument or memorial that is displayed on public property. The section also prohibits the willful and malicious destruction, demolition, or pulling down of any memorial or historic property if such act "would constitute a violation of s. 806.135."⁴⁴

A person or entity cannot take or remove a monument or memorial that is displayed on public property, without the owner's permission to do so. If the owner cannot be determined, then permission must be granted 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.

If neither the owner, nor one of the specified groups or members thereof is available to provide permission, the owner of the land may seek to acquire ownership of the monument or memorial through adverse possession. This will require the filing of court documents and filing fees to have the title to the monument or memorial extinguished and transferred.

If a monument or memorial is removed without appropriate permission, or destroyed, demolished, or pulled down in violation of s. 806.135, F.S., specified groups or individuals may bring a civil action in circuit court in the county in which the monument or memorial was located. The bill vests this right in (1) a group involved in the design, erection, or care of a subject monument or memorial, (2) a member thereof, (3) a group that regularly uses the monument or memorial for remembrance, or (4) a person who does so.

A local government that removes, damages, or destroys a monument or memorial must pay to restore the monument or memorial to its original condition, or as close as possible. If the local government cannot afford to do so, then the Department of State must pay for such restoration. The Department of State must withhold any arts, cultural, and historic preservation funding from the local government until it has reimbursed the state for the cost of restoration.

These provisions apply retroactively to monuments that have been removed, damaged, or destroyed on or after October 1, 2020.

An individual official, agent, or member of a local government who directs, assists, facilitates, or votes to remove or destroy a monument or memorial that is, in fact, removed or destroyed on or after July 1, 2024, is subject to a civil penalty, the greater of either a fine of up to \$1,000, or the

⁴⁴ Section 806.135, F.S., defines a "memorial" differently than the bill. It requires that the plaque, statute, etc. honor or recount 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." It is unclear whether this prohibition in the bill applies to memorials, as defined in proposed s. 267.201, or as defined in s. 806.135, F.S.

actual cost of removing and replacing the monument or memorial (including necessary repairs). No other entity can reimburse the subject for his or her payment of the penalty.

Additionally, an elected local government official who knowingly and willfully violates the bill on or after July 1, 2024, is subject to suspension or removal from office by the Governor.

Relocation as a Result of Construction

Section 2 preempts a local government's authority to relocate a historical monument or memorial, permitting such action only temporarily and due to construction. During the construction, the local government must relocate the monument or memorial to a site of similar prominence, honor, visibility, and access within the same county or municipality of its original location. The local government must restore the monument or memorial to its original location within 12 months of the construction project's completion. If it cannot be returned to its original location, the local government must consult with either the Commission, and for a military monument or memorial, the executive director of the DVA, to determine a location "as close as possible to the original location in a prominent place for easy and accessible public viewing" for the monument or memorial.

Section 4 also implements requirements about the relocation of a monument or memorial due to construction, expansion, or alteration of a public building, road, street, or highway, or any other construction or infrastructure project. If a person or entity moves a monument or memorial due to such construction, it must replace the monument or memorial within a reasonable time, but not more than 12 months after the construction project is complete.

If it is impossible to return the monument or memorial to its original location, then it must be placed as close as possible to its original location in a prominent place that ensures easy and accessible public viewing within the county or municipality in which it was originally placed.

The person or entity that takes or removes the monument or memorial from its location due to construction or rehabilitation project must notify the State Historic Preservation Officer within 10 days of the removal or taking, on a form developed by the Officer. Similarly, the Officer must be notified when the construction or rehabilitation project is completed. The notice of completion must include a statement of whether the monument or memorial was returned to its original location, and if not, its current location.

It is not clear how the provisions included in sections two and four that relate to relocation of a memorial or monument interact.

Section 5 provides that if any provision of the act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can still have valid effect. The provisions of this act are therefore severable.

Section 6 provides the bill takes effect July 1, 2024.

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:Retroactive

Absent an express statement of legislative intent, a statute is presumed to operate only prospectively, not retroactively.⁴⁵ 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.⁴⁶

The bill applies civil penalties to any monuments or memorials that have been removed, damaged, or destroyed on or after October 1, 2020. This may be found to be a retroactive application of the law.

Freedom of Speech

The First Amendment of the United States Constitution protects the right to freedom of expression from government interference. The First Amendment is applicable to the states through the Due Process Clause of the Fourteenth Amendment.⁴⁷ “[T]he First Amendment assures the broadest tolerable exercise of free speech, free press, and free

⁴⁵ *Fla. Ins. Guar. Ass’n., Inc. v. Devon Neighborhood Ass’n. Inc.*, 67 So.3d 187, 194-95 (Fla. 2011).

⁴⁶ *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.”).

⁴⁷ *See De Jonge v. Oregon*, 299 U.S. 353, 364–65(1937)(incorporating right of assembly); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (incorporating right of freedom of speech).

assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well.”⁴⁸

It is well established that a government regulation based on the content of speech is presumptively invalid and will be upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.⁴⁹ The government bears the burden of demonstrating the constitutionality of any such content-based regulation.⁵⁰

The United States Supreme Court has recognized that First Amendment protection extends to corporations.⁵¹ “This protection has been extended by explicit holdings to the context of political speech.”⁵² Under these precedents, it is well settled that political speech does not lose First Amendment protection “simply because its source is a corporation.”⁵³ Corporations also have a right to unrestricted independent expenditures for political communications and elections as a form of corporate speech.⁵⁴

Because the bill may be interpreted to prevent a corporation or public person from making donations to a local government representative who was fined pursuant to the bill, it may implicate the entity’s or individual’s freedom of speech to make such political expenditures.

Single Subject

“Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”⁵⁵ Under this single subject clause, the full title of an act must be so worded as not to mislead a person of average intelligence as to the scope of the enactment, and must be sufficient to put that person on notice and cause him to inquire into the body of the statute itself.⁵⁶ The bill is entitled “An act relating to protection of historical *monuments and memorials*.” Line 141, however, creates civil penalties for an act that constitutes a violation of s. 806.135, F.S., which includes the willful and malicious destruction, demolition, or pulling down of an *historic property*. A court may find the bill unconstitutional for failure to give notice that someone may be found civilly liable of the destruction, etc. of historic property.

⁴⁸ *Douglas v. City of Jeannette (Pennsylvania)*, 319 U.S. 157, 179, (1943) (Jackson, J., concurring in result).

⁴⁹ *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 665-66 (2004).

⁵⁰ *Id.* at 660.

⁵¹ *Citizens United v. Federal Election Commission*, 558 U.S. 310, 342 (2010).

⁵² *Id.* (citing *NAACP v. Button*, 371 U.S. 415, 428-429 (1963); *Grosjean v. American Press Co.*, 297 U.S. 233, 244 (1936)).

⁵³ *Id.* (citing *First Nat. Bank of Boston v. Bellotti*, 435 U.S. at 784 (1978); see *Pacific Gas & Elec. Co. v. Public Util. Comm’n of Cal.*, 475 U.S. 1, 8, 106 S.Ct. 903, 89 L.Ed.2d 1 (1986) (plurality opinion) (“The identity of the speaker is not decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the ‘discussion, debate, and the dissemination of information and ideas’ that the First Amendment seeks to foster” (quoting *Bellotti*, 435 U.S., at 783)).

⁵⁴ *Id.* at 340.

⁵⁵ FLA. CONST. art. III, s. 6.

⁵⁶ *Franklin v. State*, 887 So.3d 1063, 1076 (Fla. 2004), citing *Loxahatchee River Envtl. Control Dist. v. Sch. Bd. of Palm Beach County*, 515 So.2d 217, 219 (Fla. 1987).

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

None.

B. Private Sector Impact:

A private entity or person may be subject to civil liability for the unauthorized taking or removal of a monument or memorial that is displayed on public property, and for the unauthorized.

C. Government Sector Impact:

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

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 related to the:

- Development of a rule to adopt a form for the reporting of a taking or removal of a monument or memorial from its location due to construction or rehabilitation project.
- Maintenance of records relating to notice of removal or replacement of a monument or memorial during construction.
- Increased need for meetings of the Florida Historical Commission to determine permissible actions relating to the state's monuments and memorials.

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

VI. Technical Deficiencies:

Lines 47-61 and 157-169 both address the temporary relocation of a monument or memorial due to construction. While the provisions are similar, they are not the same. This may result in confusion regarding when determining one's responsibilities in such a situation.

Line 144 refers to subsection (4), but it appears that it should refer to subsection (3).

Lines 204-210 require a local government that seeks to remove or destroy a monument to place a good faith estimate of the amount necessary to replace the monument or memorial into an escrow account. Lines 180-190 prescribes procedures for when a local government is not able to fully fund the restoration of the monument or memorial. These provisions may be better understood if placed in the same subsection, and if they use more consistent terminology (e.g., use "restoration" instead of "replace.")

Line 217 refers to a "military monument, marker, plaque, or memorial." It is unclear whether the sponsor intended to use "monument," which includes a marker and plaque as defined in the bill.

Lines 191-199 creates a civil penalty applicable to an official, agent, or member of a local government to directs, assists, facilitates, or votes to remove or destroy a monument or memorial. It is unclear whether this applies to monuments that are “removed” during construction, or to those that are permanently removed. Clarification may be needed for proper application of the penalty.

Lines 200-203 allows the Governor to remove an elected local government official from his or her office if, while acting in an official capacity, the official knowingly and willfully violates “this section.” It is unclear what violation this refers to, and could include the unauthorized taking or removing of a monument or memorial; failure to return a monument or memorial to a site of similar prominence, honor, visibility, and access; failure to notify the State Historic Preservation Officer of the removal and subsequent return of a monument or memorial as a result of construction; and directing, assisting, facilitating, or voting to remove or destroy a monument or memorial.

“Officer” needs to be capitalized on line 212 for consistency throughout the bill.

VII. Related Issues:

Rulemaking Authority

“A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required.”⁵⁷ The bill requires the Division of Historical Resources to adopt a form by which a local government can notify the Division of removal or replacement of a monument or memorial due to construction. A form is a Departmental rule that must be adopted in accordance with ch. 120, F.S. The bill needs to specify rulemaking authority to adopt this rule.

Private Property

Lines 71 through 77 allow the Secretary of State or executive director of the DVA to decide that a marker or plaque that provides additional context be placed near a monument or memorial. If the memorial or monument is owned by a private party or placed on private property, this authority and its related decisions may infringe upon the private owner’s rights.

Standing

Lines 150-156 grants standing to bring a civil action for the unauthorized taking or removal of a monument or memorial that is displayed on public property to parties other than the property owner. This language could be interpreted two ways. The first is that these parties are granted standing to sue on behalf of the injured property owner. This appears consistent with Rule 1.210 of the Florida Rules of Civil Procedure. If the party is successful in the suit, the damages would be payable to the injured property owner. The second interpretation is that these parties are granted standing to seek redress based on the damages to those particular parties (rather than the injured property owner). In this case, punitive damages may not apply because there is no

⁵⁷ Section 120.536, F.S.

monetary loss. The sponsor may wish to clarify the intended damages available for redress by those granted standing in the bill.

Adverse Possession

In Florida, there are two ways to acquire land by adverse possession—under color of title,⁵⁸ or without color of title,⁵⁹ by open, continuous, and actual possession. In order to establish adverse possession under color of title, a party must claim for at least seven years under a recorded, written document conveying the disputed land, and must be in continuous possession of the property for seven years. When the occupant has been in actual, hostile, and continued occupation of real property for seven years under a claim of title exclusive of any other right, but not found in a written instrument, the possession is “without color of title.”

Gifts of monuments or memorials may be made to governments, and may include certain restrictions that muddy the items’ ownership (e.g., specification of the duration of the gift, after which it must be returned to the owner; requirement that the gift remain in a particular location, etc.). However, it does not appear that adverse possession applies to fixtures on property, but rather to the real property or land itself. It may be more appropriate to provide for the escheatment of the monument or memorial to the state.⁶⁰

VIII. Statutes Affected:

This bill creates unnumbered sections of law, substantially amends section 267.0612, and 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.

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

⁵⁸ Section 95.16, F.S.

⁵⁹ Section 95.18, F.S.

⁶⁰ See, *Delaware v. Pennsylvania*, 598 U.S. 115, (2023). “Escheatment is the power of a state, as a sovereign, to take custody of property deemed abandoned.”