

II. Present Situation:

Official State Emblems

Chapter 15, F.S., statutorily designates official state emblems. To date, there are designations for an official state seal, motto, tree, fruit, beverage, citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal and saltwater mammal, butterfly, reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad museums, transportation museum, flagship, soil, fiddle contest, band, sports hall of fame, pie, honey, horse, and heritage cattle breed.¹

Department of State

The Department of State (department), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs and Administration. The head of the department is the Secretary of State (Secretary).² The Secretary is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary performs functions conferred by the State Constitution upon the custodian of records.

The department is authorized to create Community Support Organizations for its Divisions of Cultural Affairs³, Historical Resources⁴, and Library and Information Services.⁵ Citizen support organizations (CSOs) are statutorily-created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes.

The Division of Cultural Affairs

The Division of Cultural Affairs is Florida's designated state arts agency. The division promotes arts and culture as essential to the quality of life for all Floridians. To promote excellence and encourage access to cultural opportunities, the division provides funding, programs and resources, including grants for: arts in education, local arts agencies, state service organizations, museums, theater, dance, folk arts, literature, media arts, multidisciplinary, music, sponsor/presenter, and visual arts programs and projects.

The Division of Cultural Affairs also administers the Museum of Florida History and has its offices in the historic Brokaw-McDougall House.⁶ Opened in 1977, the Museum of Florida History collects, preserves, exhibits, and interprets evidence of past and present cultures in Florida, and promotes knowledge and appreciation of this heritage. As the state history museum, it focuses on artifacts and eras unique to Florida's development and on roles that Floridians have

¹ Sections 15.0301, F.S. through 15.0527, F.S.

² Section 20.10, F.S.

³ Section 265.703(1), F.S.

⁴ Section 267.17(1), F.S.

⁵ Section 257.43(1), F.S.

⁶ Florida Department of State, Division of Cultural Affairs, About Us, Mission, available at <https://dos.myflorida.com/cultural/about-us/mission/> (last visited on March 5, 2021).

played in national and global events. Through exhibits, educational programs, research, and collections, the Museum reflects the ways that people have shaped and reacted to their cultural and natural environments.⁷ The Division of Cultural Affairs also oversees the Museum and Capitol gift shops as well as the citizen support organization charged with supporting the Museum.⁸

The Friends of the Museums of Florida, Inc., is the CSO created to support programs, exhibits, collections, and activities of the Museum of Florida History and the Knott House Museum.⁹ A citizen support organization is defined as an organization that is:

- A not-for-profit corporation approved by the Department of State;
- Organized and operated to conduct programs and activities, raise funds, request and receive grants, and make expenditures to benefit the division;
- Determined by the division to be consistent with the goals of the division and in the best interest of the state; and
- Approved in writing by the division to operate for the benefit of the division.¹⁰

The identity of donors to the CSO who desire to remain anonymous are confidential and exempt from public records requirements.¹¹

Florida Historical Resources Act

The Florida Historical Resources Act¹² was established to preserve archaeological sites and objects of antiquity for the public benefit.¹³ The Florida Historical Resources Act recognizes Florida's rich and unique heritage of historic properties as an important legacy to be valued and conserved for present and future generations. Accordingly, Florida has adopted a state policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state's historic environment and resources.¹⁴

Florida Arts and Cultural Act

The Florida Arts and Cultural Act (the Act) is set forth in ss. 265.281-265.709, F.S. The Legislative intent of the Act is to provide state support for, and to gain national and international recognition of, the efforts, works, and performances of Florida artists, art agencies, museums and nonprofit organizations.¹⁵ The Act defines the term "division" to mean the Division of Cultural Affairs of the Department of State.¹⁶ The division is charged with directly administering and overseeing all programs authorized by the Act. The division must:

⁷ Department of State, *Museum of Florida History*, <https://museumoffloridahistory.com/> (last visited March 5, 2021).

⁸ Sections 265.703, and 265.707, F.S.; Department of State, *Museum of Florida History*, <https://museumoffloridahistory.com/> (last visited March 5, 2021).

⁹ Department of State, *Museum of Florida History*, <https://museumoffloridahistory.com/support/membership-program/about-the-friends-of-the-museums-of-florida-history-inc/> (last visited March 5, 2021).

¹⁰ Section 265.703(1), F.S.

¹¹ Section 265.703(3), F.S.

¹² Sections 267.011-267.1736, F.S.

¹³ Section 267.14, F.S.

¹⁴ Section 267.061(2)(a), F.S.

¹⁵ Section 285.282, F.S.

¹⁶ Section 285.283(4), F.S.

- Accept and administer state and federal funds appropriated by the Legislature or funds received from other public or private sources;
- Advance funds for grants on a quarterly basis;
- Enter into agreements for awarding grants or other contracts;
- Consult with and advise other individuals, groups, organizations or state agencies and officials, particularly the Governor and the Cabinet, concerning the acquisition by gift or purchase of fine art works, the appropriate use and display of state-owned art treasures for maximum public benefit, and the suitability of any structures or fixtures, including framing, primarily intended for ornamental or decorative purposes in the interior of public buildings;
- Accept on behalf of the state donations of money, property, art objects, and antiquities;¹⁷
- Sponsor performances and exhibits; promote and encourage the study and appreciation of arts and culture; and collect, publish, and print pamphlets, papers, newsletters, and other materials related to arts and cultural programs available throughout the state;
- Conduct and support cultural programs and cultural exchanges by coordinating with the appropriate state agencies and other organizations;
- Accept funding and other forms of support for the purposes in this act;
- Notwithstanding s. 287.022 or s. 287.025(1)(e), enter into contracts to insure museum collections, artifacts, relics, and fine arts to which it holds title or which are on loan to the division; and
- Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.¹⁸

Cultural Facilities – Grants for Acquisition

The Division of Cultural Affairs is permitted to accept and administer moneys appropriated to it for providing grants to counties, municipalities, and qualifying nonprofit corporations for the acquisition, renovation, or construction of cultural facilities.¹⁹ A county, municipality or qualified corporation²⁰ may apply for a grant of state funds for the acquisition, renovation, or construction of a cultural facility.²¹ The Florida Council on Arts and Culture must review each application for a grant and must annually submit to the Secretary for approval lists of all applications recommended by the council for award of grants, arranged in order of priority.²²

Any contract administered under s. 265.701, F.S., must require the recordation of a restrictive covenant by the grantee and property owner or purchase of a bond as prescribed by rule to ensure that the facility continues to be used as a cultural facility for a period of 10 years following the grant award.²³

¹⁷ Such donations of money and any cash income may be received from the disposal of any donations of property, art objects, or antiquities, which shall be deposited into the Grants and Donations Trust Fund and are hereby appropriated for use by the division for the purposes authorized in the Act.

¹⁸ Section 265.284(3)(a) – (j), F.S.

¹⁹ Section 265.701(1), F.S.

²⁰ For the purposes of this section, a “qualified corporation” is a corporation which is designated a not-for-profit corporation pursuant to s. 501(c)(3) or (4) of the Internal Revenue Code of 1954, and which is described in, and allowed to receive contributions pursuant to the provisions of, s. 170 of the Internal Revenue Code of 1954, and which is a corporation not for profit incorporated pursuant to chapter 617.

²¹ Section 265.701(2), F.S.

²² Section 265.701(3), F.S.

²³ Section 265.701(4), F.S.

Division of Historical Resources

The Division of Historical Resources is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The Division Director's Office oversees a Historic Preservation Grants program to help preserve and maintain Florida's historic buildings and archaeological sites, coordinates outreach programs, such as the State Historical Markers program and Florida Folklife program which identifies and promotes the state's traditional culture. The division director serves as the State Historic Preservation Officer, acting as the liaison with the national historic preservation program conducted by the National Park Service.²⁴

The Division of Historical Resources is also tasked with administering the Florida Folklife Program. Under the program, the division must identify, research, interpret, and present Florida folk arts, artists, performers, folklore, traditions, customs, and cultural heritage and make folk cultural resources and folklife projects available throughout the state. The division is assisted by the Florida Folklife Council, a seven member council appointed by the Secretary of State, in carrying out its duties under the program.²⁵ The program is funded in part by the National Endowment for the Arts.²⁶

Division of Library and Information Services

The Division of Library and Information Services manages the State Library and Archives, supports public libraries, directs record management services, and is the designated information resource provider for the state of Florida.²⁷

The division may receive gifts of money, books, or other property and may purchase books, periodicals, furniture, and equipment it deems necessary to carry out its mission. The division may also give aid and assistance to all school, state, academic, free, and public libraries, and to all communities in the state which may establish libraries. The division is required to maintain a library for state officials and employees and provide research and informational services for all state agencies. The division must also provide library services to blind and physically handicapped persons within the state.²⁸

Secretary of State – Florida's Chief Cultural Officer

The Divisions of Cultural Affairs, Historical Resources, and Library and Information Services of the department promote programs having substantial cultural, artistic, and indirect economic significance that emphasize American creativity.²⁹ The Secretary is designated as "Florida's Chief Cultural Officer" and is encouraged to initiate and develop relationships between the state

²⁴ Florida Department of State, Division of Historical Resources, About, Program Areas, available at <https://dos.myflorida.com/historical/about/> (last visited on February 4, 2020).

²⁵ Section 267.161, F.S.

²⁶ Florida Department of State, Agency Analysis of 2021 SB 1404 (February 24, 2021) (on file with the Senate Governmental Oversight and Accountability Committee); *see also* Florida Division of Historical Resources, *Florida Folklife Program*, <https://dos.myflorida.com/historical/preservation/florida-folklife-program/#:~:text=A%20component%20of%20the%20Florida,Folk%20and%20Traditional%20Arts%20Program>. (last visited March 5, 2021).

²⁷ Florida Department of State, Division of Library and Information Services, available at <https://dos.myflorida.com/library-archives/> (last visited on February 4, 2020).

²⁸ Section 257.04, F.S.

²⁹ Section 15.18, F.S.

and foreign governmental officials in order to promote Florida as the center of American creativity.³⁰ As Florida's Chief Cultural Officer, the Secretary must coordinate international activities with Enterprise Florida, Inc., and any other organization the Secretary deems to be appropriate.³¹ To accomplish these purposes, the secretary has the power and authority to do the following:

- Disseminate any information pertaining to the state which promotes the state's cultural assets;
- Plan and carry out activities designed to cause improved cultural and governmental programs and exchanges with foreign countries;
- Plan and implement cultural and social activities for visiting foreign heads of state, diplomats, dignitaries, and exchange groups;
- Encourage and cooperate with other public and private organizations or groups in their efforts to promote the cultural advantages of Florida;
- Serve as the liaison with all foreign consular and ambassadorial corps, as well as international organizations, that are consistent with the purposes of expanding international and cultural relations; and
- Provide, arrange, and make expenditures for the achievement of any or all of the purposes specified in this section.³²

Property Abandoned at Museums

The Legislature has declared that the people of Florida benefit from having property of artistic, historic, cultural, or scientific value loaned to Florida museums.³³ However, problems arise in relation to indefinite or long term loans when museums and lenders fail to maintain contact. In response to these problems, the Legislature has established uniform procedures governing the disposition of unclaimed property³⁴ on loan to museums. The rules are designed to:

- Encourage museums and their lenders to exercise due diligence in monitoring loans;
- Allocate fairly responsibilities between lenders and borrowing museums;
- Establish procedures for lenders to preserve their interests in property loaned to museums for indefinite or long terms; and
- Resolve expeditiously the title to the unclaimed loans left in the custody of museums.³⁵

Whenever property is loaned to a museum, the museum is required to:

- Make and retain a written record containing the lender's contact information, a description of the property, a description of the property's general condition, and the beginning and ending date of the loan;
- Provide the lender with a signed receipt or loan agreement;

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Museum" is defined to mean a public or private not-for-profit agency or institution located in Florida and organized on a permanent basis for primarily educational, scientific, or aesthetic purposes, which owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis. Section 265.565(2)(c), F.S.

³⁴ "Unclaimed property" is defined to mean property which is on loan to the museum and in regard to which the lender, or anyone acting legitimately on the lender's behalf, has not contacted the museum for at least 25 years from the date of the beginning of the loan, if the loan was for an indefinite or undetermined period, or for at least 5 years after the date upon which the loan for a definite period expired. Section 265.565(2)(f), F.S.

³⁵ Section 265.565(1), F.S.

- Inform the lender of the Florida Arts and Culture Act; and
- Provide the lender with a copy of the Florida Arts and Culture Act upon request.³⁶

If there is a change in the lender's contact information, change in the ownership of the loaned property, or a change in the duration of the loan is negotiated, the museum must update its records to reflect the change. Whenever a museum renews or updates the records of an existing loan, the museum must inform the lender of the existence of the Florida Arts and Culture Act and provide the lender with a copy upon the lender's request.³⁷ The museum is also required to give the lender prompt notice of any injury to or loss of property on the loan.³⁸

The lender is responsible for notifying the museum of any change in the lender's address or change in ownership of the property. Failure to provide the required notification could result in the owner's loss of rights to the property.³⁹ Additionally, it is the responsibility of a successor of a lender to document the passage of rights of control of the property that is in the custody of a museum.⁴⁰

In order to terminate a loan for unclaimed property, the museum must make a good faith and reasonable search for the identity and last known address of the lender from the museum records and other records that are reasonably available to museum staff.⁴¹ If the museum is able to identify the lender and his or her last known address, the museum must provide notice of termination via certified mail. The notice of termination must include:

- The name of the lender;
- A description of the property sufficient in detail for ready identification;
- The beginning date of the loan, if known;
- The termination date of the loan, if applicable;
- The name and address of the appropriate museum official to contact regarding the loan; and
- A statement that within 90 days the lender is required to remove the property from the museum or contact the designated official in the museum to preserve the lender's interests in the property.⁴²

If the museum is unable to acquire enough information to send a letter by certified mail, or if a signed return receipt is not received within 30 days, the museum must publish a notice of termination containing all the above required information at least twice in a publication of general circulation in the county in which the museum is located and the county of the lender's last known address. The publications must be at least 60 or more days apart.⁴³

³⁶ Section 265.565(3)(a), F.S.

³⁷ Section 265.565(3)(b), F.S.

³⁸ Section 265.565(3)(c), F.S.

³⁹ Section 265.565(4)(a), F.S.

⁴⁰ Section 265.565(4)(b), F.S.

⁴¹ Section 265.565(5)(a), F.S.

⁴² Section 265.565(5)(b), F.S.

⁴³ Section 265.565(5)(c), F.S.

If the lender fails to respond to the notice of termination sent via certified mail or included in a publication of general circulation within 90 days, the title to the unclaimed property will pass to the museum.⁴⁴

National Endowment for the Arts

The National Endowment for the Arts (NEA) is an independent, federal agency with substantial discretion to award financial grants to support the arts. The NEA awards grants to groups and individuals whose artistic endeavors have substantial artistic and cultural significance or are otherwise worthy of public support, and to state agencies established to serve the same purpose.⁴⁵ All states have a State Arts Agency recognized by the NEA. The NEA distributes program funding to those State Arts Agencies, with each state devoting its own appropriated funds to support arts programs throughout the state.⁴⁶ The Division of Cultural Affairs is recognized by the NEA as Florida's official State Arts Agency and receives an annual partnership grant from the NEA.⁴⁷

III. Effect of Proposed Changes:

Section 1 creates s. 15.0455, F.S., to designate the Museum of Florida History, located in Tallahassee, as the official state history museum.

Section 2 amends s. 15.18, F.S., to provide that the Secretary of State will be known as "Florida's Chief Arts and Cultural Officer" instead of the chief cultural officer.

Section 3 amends s. 20.10, F.S., to rename the Division of Cultural Affairs as the Division of Arts and Culture.

Section 4 amends s. 265.281, F.S., to correct statutory references.

Section 5 amends s. 265.283, F.S., to update references to the division and defines the term "folklife" to mean:

[T]he traditional expressive culture shared within the various groups in Florida; familial, ethnic, occupational, religious, and regional. Expressive culture includes a wide range of creative and symbolic forms, such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, and handicraft, which forms are

⁴⁴ Section 265.565(6), F.S.

⁴⁵ 20 U.S.C. § 954 (2018).

⁴⁶ Americans for the Arts, *National Endowment for the Arts – Funding for Art Agencies*, <https://www.americansforthearts.org/by-program/reports-and-data/legislation-policy/legislative-issue-center/national-endowment-for-the-arts%E2%80%9494funding-for-arts-agencies#:~:text=In%20a%20striking%20example%20of,arts%20programs%20throughout%20the%20state> (last visited March 5, 2021).

⁴⁷ Florida Department of State, *Division of Cultural Affairs - National Endowment for the Arts*, <https://dos.myflorida.com/cultural/about-us/partners/national-endowment-for-the-arts/> (last visited February 27, 2021); National Assembly of State Arts Agencies, *State Arts Agency Directory*, <https://nasaa-arts.org/state-arts-agencies/saa-directory/> (last visited March 5, 2021).

generally learned orally, by imitation, or in performance and are maintained or perpetuated without formal instruction or institutional direction.

Sections 6, 7, and 8 amend ss. 265.286, 265.2865, and 265.701, F.S., respectively, to correct statutory references and update references to the division.

Section 9 repeals s. 265.7025, F.S., regarding definitions relating to historic programs.

Section 10 amends s. 265.703, F.S., to delete a public record exemption for the Museum of Florida History citizen support organization no longer necessary due to changes made by the bill.

Sections 11, 12, 13, and 14 repeal ss. 265.704, 265.705, 265.706, and 265.709, F.S., respectively, relating to the Division of Cultural Affairs' powers and duties relating to historic programs.

Section 15 amends s. 267.021, F.S., to define the term "historical museum" and remove the definition of "folklife." The term "historical museum" is defined to mean

[A] department or a department or an agency of state or local government or a public or private nonprofit organization located in Florida and operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting educational programs that are related to the historical resources of Florida.

Section 16 amends 267.071, F.S., to require the Division of Historical Resources to establish professional standards for the preservation, exclusive of acquisition, of each of the collections under state ownership or control and to take appropriate action to foster appreciation of Florida history and culture.

Section 17 transfers and renumbers s. 265.707, F.S., as s. 267.0721, F.S., authorizing the Division of Historical Resources (1) to operate the Museum of Florida History; (2) to establish accounts in credit card banks for the deposit of credit card sales invoices; and (3) to promote and encourage knowledge and appreciation in other museums operated by the division.

Current law requires the division to deposit gifts and donations for the purpose of assisting the Museum of Florida History and its programs. This section authorizes the division, at its discretion, to also deposit grant funding and adds that the funding may be for the purposes of "other museums operated by the division."

Section 18 transfers and renumbers s. 265.565, F.S., relating to property loaned to museums, as s. 267.0723, F.S. Chapter 267, F.S. relates to historical resources. This section defines the term "abandoned property" to mean "property left at or delivered to a museum with no loan, deed of gift, or donation paperwork."

Current law requires a museum to inform a lender of the existence of the Florida Arts and Culture Act relating to property loaned to a museum and to provide the lender with a copy of such statutory provisions upon the lender's request. Section 18 removes the requirement for a

museum to inform but maintains the requirement that upon a lender's request, a museum must provide a copy of the relevant statutory provisions.

This section amends the notice of termination provision to allow for the required information to be provided on the museum's website and specifies that publication may be by physical or online means.

This section also provides for the disposition of abandoned property by authorizing a museum to keep, transfer, sell or dispose of abandoned property.

Section 19 amends s. 267.115, F.S., to revise the cost or value threshold that triggers a complete inventory of objects of historical or archaeological value from \$500 to \$1000. For objects valued or costing less than \$1,000, only a sample inventory is required.

Section 20 renumbers s. 267.16, F.S., as s. 265.802, F.S., to transfer the duties and responsibilities of the Division of Historical Resources regarding the Florida Folklife Program to the Division of Arts and Culture.

Section 21 renumbers s. 267.161, F.S., as s. 265.803, F.S., to transfer the Florida Folklife Council from the Division of Historical Resources to the Division of Arts and Culture.⁴⁸

Sections 22, 23, and 24 amend ss. 258.081, 464.401, and 553.902, F.S., respectively, to make conforming changes.

Section 25 amends chapter 2020-88, Laws of Florida, to make conforming changes.

Section 26 provides that the bill takes effect July 1, 2021.

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 shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴⁸ The department indicates that such reassignment of the Florida Folklife Program will bring the program in line with new federal funding program requirements from the National Endowment for the Arts. *See* Florida Department of State, Agency Analysis of 2021 SB 1404, p. 6 (February 24, 2021) (on file with the Senate Governmental Oversight and Accountability Committee)

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department may experience an indeterminate positive fiscal impact as the reassignment of the Florida Folklife Program brings the program in line with new federal funding program requirements from the National Endowment for the Arts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 15.18, 20.10, 265.281, 265.283, 265.286, 265.2865, 265.701, 265.703, 267.021, 267.071, 265.707, 267.0721, 265.565, 267.0723, 267.115, 267.16, 265.802, 267.161, 265.803, 258.081, 468.401, and 553.902.

This bill creates section 15.0455 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 265.7025, 265.704, 265.705, 265.706, and 265.709

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.
