

# SENATE STAFF ANALYSIS AND ECONOMIC 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: Banking and Insurance Committee

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BILL: CS/SB 2152

SPONSOR: Governmental Oversight and Productivity Committee and Senator Argenziano

SUBJECT: Department of State

DATE: April 25, 2005

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	<b>Fav/CS</b>
2.	Herrin	Yeatman	CA	<b>Favorable</b>
3.	Emrich	Deffenbaugh	BI	<b>Favorable</b>
4.			TA	
5.				
6.				

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## I. Summary:

The committee substitute (CS) designates the Division of Cultural Affairs as the state arts administrative agency; requires a post-audit for cultural endowment recipients; requires a recordation of a restrictive covenant for cultural facility and regional cultural facility grantees, as well as a requirement for bonds and for repayment of grant awards under certain circumstances; creates a citizen support organization to assist the division with its cultural and arts programs; deletes three programs which were never funded by the Legislature; removes obsolete language; and, repeals language relating to the authority of the department to enter into indemnity agreements.

The CS permits Florida Historical Commission members to stay in office until a replacement is appointed; permits the Commission presiding officer to appoint a designee to chair certain grant panels; amends location and citizen advisory requirements for regional offices; provides for the establishment of endowments; requires rules for prohibited practices and penalties; and removes obsolete language.

The CS designates the Division of Library and Information Services as the state library administrative agency for federal purposes; changes the size, composition, and selection process of the State Library Council; deletes statutory language authorizing council members to request the president-elect of the Florida Library Association to serve as a nonvoting council member; modifies the responsibilities of the State Librarian; provides definitions for the chapter governing the Division of Library and Information Services; and creates a citizen support organization to assist the division with its library, archives, and records management programs. The CS also revises language relating to library grants to reflect correct terminology.

The CS deletes an obsolete provision of law requiring the Division of Corporations to be accountable for certain performance standards for Uniform Commercial Code documents.

This CS creates the following sections of the Florida Statutes: 257.015; 257.43; and 265.703.

This CS amends the following sections of the Florida Statutes: 257.02; 257.031; 257.12; 257.192; 265.284; 265.2865; 265.606; 265.701; 265.702; 267.031; 267.0612; 267.0619; 267.0731; 267.13; 267.173; and 267.174.

This CS repeals the following sections of the Florida Statutes: 15.0913; 265.51; 265.52; 265.53; 265.54; 265.55; 265.56; and 267.16(3).

## II. Present Situation:

### **Structure and Responsibilities of Department of State:**

The Department of State (DOS), 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 Department of State is charged with the responsibility for:

- < Serving as the official custodian of records;
- < Administering and enforcing the state election laws;
- < Filing acts and papers of the Legislature and county ordinances;
- < Filing all rules and regulations contained in the Florida Administrative Code and publishing and distributing proposed rules and regulations in the Florida Administrative Weekly for state agencies;
- < Issuing commissions to all elected and appointed officials;
- < Maintaining financial disclosures for all constitutional and state officers and specified employees;
- < Qualifying all federal and state candidates;
- < Serving as the ministerial filing agency that serves as the statewide repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks;
- < Preserving and promoting the state's cultural heritage and programs through cultural grant programs and promotional programs and implementing programs to gain international recognition on behalf of Florida artists and arts programs;
- < Protecting, preserving, and promoting Florida's historical resources through encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage;
- < Administering the statewide historic preservation plan and administering historic properties of the state, either directly or through management of contracts;

- < Providing library, records management, and archival services at the state and local level; and,
- < Enhancing and coordinating foreign affairs and diplomacy fostering global relationships for Florida.

The Division of Corporations is a ministerial filing agency that serves as the statewide central repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks. The division has two bureaus: Commercial Recording and Commercial Information Services.

The Division of Cultural Affairs is made up of the Office of the Director and Bureau of Grants Services. The division awards, administers, monitors, and evaluates cultural grant programs of the Department of State, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida.

The Division of Elections is diverse and oversees many different functions. The division is comprised of the Director's office and three bureaus: Election Records; Voting System Certification; and Administrative Code and Weekly.

The Division of Elections administers and enforces the state election laws; files acts and papers of the Legislature and county ordinances; files all rules and regulations contained in the Florida Administrative Code; publishes and distributes proposed rules and regulations in the Florida Administrative Weekly for state agencies; issues formal advisory opinions; oversees the Florida Voter Registration Act; issues commissions to all elected and appointed officials; maintains financial disclosures for all constitutional and state officers and specified employees; and qualifies all federal and state candidates.

The Division of Historical Resources is charged with encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage. The responsibilities related to historic preservation are not only governed by state law but also by the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470). The division is comprised of the Director's office and three bureaus: Archaeological Research, Historical Museums, and Historic Preservation.

The division administers public information programs, the statewide historic preservation plan, the operation of historic sites and properties, and state and federal grants for historic preservation. Its duties also include the maintenance and operation of Florida's state historic museums, promotion and administration of the Florida Folklife Program, and administration of various archaeological research and preservation programs, including a historic marker program. Apart from the R.A. Gray Building where the Florida Museum of History and the division offices are housed, 63 other properties are assigned (leased) to the division to manage on behalf of the state. Only five of those are directly managed by the division, two more are not maintained

by the division but the division has responsibility for maintaining exhibits, and the remainder are subleased to other entities.

Division of Library and Information Services provides library, records management, and archival services at the state and local level. Structurally, the division administers these services through three bureaus: Archives and Records Management, Library and Network Services, and Library Development. The division provides direct library services to state government, management services, technical assistance, education, financial aid, and cooperative services. Working in partnership with archivists, librarians, records managers, government officials, and citizens, the division seeks to ensure access to materials and information of past, present and future value to enable state government and local libraries and agencies to provide effective information services for the benefit of the people of Florida.

### **Citizen-support organizations:**

There are numerous citizen-support and direct-support organizations authorized in the Florida Statutes. There is no general or uniform statute that explicitly differentiates between the two types of entities or which establishes mandatory requirements for each. Typically, both types of organizations are nonprofit corporations organized under the provisions of ch. 617, F.S., and approved by the Department of State, and both must be organized and operated in the best interests of the state. Generally, the difference between a citizen-support and a direct-support organization relates to the amount of control exercised by an agency over the organization. For example, a citizen-support organization may be authorized to be created in statute, subject to certain limitations, but agency officers or employees are not typically on the board. On the other hand, a direct-support organization normally is authorized and created in statute and often agency officers or employees may sit on the board and the secretary must approve the bylaws.

### **III. Effect of Proposed Changes:**

**Cultural Affairs** - The CS amends s. 265.284, F.S., to designate the Division of Cultural Affairs as the state arts administrative agency and gives the division the statutory authority to frame state works of art. The CS also deletes language creating the State Orchestra Program, the State Dance Program, and the State Opera Program. These programs were never funded by the Legislature.

In the grant programs administered by the Division of Cultural Affairs, the CS amends s. 265.606, F.S., to add safeguards for state funds expended on the Cultural Endowment, Cultural Facilities, and Regional Cultural Facilities Programs. A recipient of the Cultural Endowment Program funding is required to submit to the division an annual post-audit of its financial reports that is conducted by an independent certified public accountant. Section 265.701, F.S., is amended to provide that any contract for grants administered by the division for either the Cultural Facilities Program or Regional Cultural Facilities Program must require the recordation of a restrictive covenant by the grantee and property owner or the purchase of a bond to ensure that the facility continues to be used as required for a period of 10 years following the grant award. If the facility ceases to be used as a cultural facility or regional cultural facility during that period, the grant funds are required to be repaid to the Department of State according to an amortization schedule contained in departmental rules.

The CS creates s. 265.703, F.S., establishing a citizen support organization to assist the Division of Cultural Affairs with its cultural and arts programs. Finally, the CS deletes obsolete language and, repeals language relating to the authority of the Department of State to enter into indemnity agreements.<sup>1</sup>

**Historical Resources** - The CS revises s. 267.0612, F.S., relating to the Florida Historical Commission, to permit members to stay in office until a replacement is appointed thereby allowing the Commission to maintain a quorum and conduct business as required by statute. This provision is consistent with statutory requirements for member replacement on the Florida Arts Council and other councils within the Department of State. The CS also amends ss. 267.0617 and 267.0619, F.S., to give the presiding officer of the Commission the ability to appoint a designee to chair one of the special category historic preservation grants-in-aid review panels or historical museum grant review panels when no Commission member is available to serve as chair. This change provides flexibility to ensure that panels can meet in a timely manner to carry out the statutory responsibilities of the Commission, the panels, and the Division of Historical Resource. The ability to appoint a designee is also consistent with the requirements for the Florida Arts Council.

The CS amends s. 267.031, F.S., to give specific authorization to the Division of Historical Resources to establish an endowment that is consistent with its responsibilities under the Historic Preservation Act. Current law allows the division to accept gifts, bequests, loans, grants, and endowments; however, it does not specifically authorize the establishment of an endowment.

With regard to historic preservation regional offices, the CS does three things:

- removes the statutory requirement for regional offices to be in specific locations;
- requires that at least three regional offices be established; and,
- requires that each regional office have a citizen advisory board in lieu of a citizen support organization.

The CS requires the Division of Historical Resources to adopt rules related to prohibited practices regarding archaeological sites and objects of historical or archaeological value and to provide penalties associated with those prohibited practices.

The CS also amends s. 267.174, F.S., to move forward by one year the requirements for the first meeting of the Discovery of Florida Quincentennial Commemoration Commission, the initial draft of the master plan, and the submission of the master plan to the Legislature.<sup>2</sup>

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<sup>1</sup>Under the Florida Arts and Artifacts Indemnity Program, the department is required by law to make agreements to indemnify against loss or damage certain eligible items. An indemnity agreement covers the eligible items from the time they leave the premises of the lender or place previously designated by the lender until the items are returned to the premises of the lender. Aggregate claims cannot exceed \$3 million under the program. Authorized claim payments are executed by the Chief Financial Officer from the Working Capital Fund. According to the department, only one organization received a contract under this law and no claims have ever been filed.

<sup>2</sup> Section 267.174, F.S., currently requires that the initial meeting of the Commission be no later than January 31, 2006, the initial draft of the master plan be submitted to the Legislature by January 2007, and the master plan be submitted by January 2008. The quincentennial celebration will not be until 2013.

Finally, the CS removes obsolete language regarding the Folklife and Great Floridians programs.

**Library and Information Services** - The CS creates s. 257.015, F.S., to provide definitions for the chapter governing the Division of Library and Information Services, including, “State Librarian,” which is defined as the person appointed by the secretary as the director of the Division of Library and Information Services pursuant to s. 257.031, F.S.<sup>3</sup> The CS amends s. 257.031, F.S., to clearly state that State Librarian is the manager of programs assigned by law to the division.

The CS amends s. 257.12, F.S., to designate the Division of Library and Information Services as the state library administrative agency for federal purposes, modifies the duties of the State Librarian to specify that management of the operations of the programs assigned by law to the division is his or her duty, and makes a technical change relating to program grants in s. 257.192, F.S.

The CS amends s. 257.02, F.S., making several changes to the State Library Council including increasing the number of members from seven to nine, requiring representation of library, archive, and records management professional associations, and deleting a specific requirement that one member must be 60 years of age or older. The CS specifically deletes statutory language authorizing council members to request the president-elect of the Florida Library Association to serve as a nonvoting council member.

Additionally, the CS creates s. 257.43, F.S., to authorize the Division of Library and Information Services to support the establishment of a citizen-support organization to provide assistance, funding, and promotional support for the library, archives, and records management programs. Under the CS, the organization must be a nonprofit corporation incorporated under ch. 617, F.S., and approved by the department. Further, the organization must be organized and operated for the purposes of conducting programs and activities; raising fund; requesting and receiving grants, gifts, and bequests of money; acquiring, receiving, holding, investing, and administering, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the division or individual program units of the division. Further, the organization must be determined by the division to be consistent with the goals of the division and in the best interests of the state, and approved in writing to operate for the direct or indirect benefit of the division.

Authorization is provided to the division to fix and collect charges for the rental of facilities and properties managed by the division. The division is also authorized to waive charges for the citizen-support organization for certain authorized purposes. Moneys received from rentals of facilities and properties managed by the division may be held in the division’s operating trust fund or in a separate depository account in the name of the citizen support organization, subject to the provisions of a letter of agreement with the division. An annual audit of the organization is required.

The CS also deletes obsolete language relating to library grants.

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<sup>3</sup> Section 257.031(1), F.S., provides that the State Librarian is appointed by the Secretary of State and establishes qualifications for the position.

**Corporations** - The CS deletes s. 15.0913, F.S., an obsolete provision of law relating to requiring the Division of Corporations to be accountable for certain performance standards for Uniform Commercial Code documents.

The CS takes effect July 1, 2005.

#### IV. **Constitutional Issues:**

##### A. Municipality/County Mandates Restrictions:

None.

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

Although the CS does not explicitly state that the citizen support organization (CSO) created under the bill is subject to open government requirements, the CSO does appear to fall within the statutory definition of an “agency” under s. 119.011, F.S. Under the bill, the CSO: (1) is created to make expenditures to or for the direct or indirect benefit of the division or individual program units of the division; (2) must be determined by the division to be consistent with the goals of the division; and (3) must be in the best interests of the state. Further, it appears that the CSO may have a role in the rental of facilities managed by the division. Section 119.011(2), F.S., defines an “agency” as

... any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, *and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.*

##### C. Trust Funds Restrictions:

Section 215.31, F.S., states:

Revenue, including licenses, fees, imposts, or exactions collected or received under the authority of the laws of the state by each and every state official, office, employee, bureau, division, board, commission, institution, agency, or undertaking of the state or the judicial branch shall be promptly deposited in the State Treasury, and immediately credited to the appropriate fund as herein provided, properly accounted for by the Department of Financial Services as to source and no money shall be paid from the State Treasury except as appropriated and provided by the annual General Appropriations Act, or as otherwise provided by law.

On page 9, lines 4-20, the CS authorizes the division to collect charges for the rental of facilities and properties managed by the division. It also permits the division to permit a citizen support organization to use these facilities rent-free if that use is in keeping with

the approved purposes of the citizen support organization and if such use would not interfere with use by the public. Additionally, the CS provides on lines 14-19:

Any moneys received from rentals of facilities and properties managed by the division may be held in the operating trust fund of the division *or in a separate depository account in the name of the citizen support organization* and subject to the provisions of the letter of agreement with the division.

As noted above, pursuant to s. 215.31, F.S., state funds are typically placed in the treasury or trust fund, not a corporate account; however, other citizen support organizations that are authorized in statute to operate on behalf of the Department of State, such as in s. 267.17, F.S., are provided the same authority as provided in this committee substitute to deposit funds in the citizen support organization's account. These entities operate under letters of agreement with the divisions that explicate their duties and responsibilities in support of the relevant program, as well as delineate authorized purposes for expenditures. The CS requires these letters of agreement to explicitly require reversion of funds held by these entities if the appropriate division finds that they are no longer operating in the best interest of the state.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

A private sector entity receiving grant funding under the cultural facilities program or regional cultural facilities program must record a restrictive covenant or purchase a bond to ensure that the facility continues to be used as required for a period of 10 years. The cost depends on the type of instrument selected by the grantee.

##### **C. Government Sector Impact:**

Local governments would receive revenue through either a restrictive covenant filing or a bond under the CS. The Department of State provided the following example of revenue impact for restrictive covenants based on Leon County filings with the Clerk of the Circuit Court: \$10 for the first page, \$8.50 for each additional page. Based on a 4-page filing, the revenue would be \$35.50 per filing. In the case of a bond, the department advises that a one-page document would be filed, which would be \$10.

The CS would require local governments receiving grant funding under the cultural facilities program or regional cultural facilities program to record a restrictive covenant or purchase a bond to ensure that the facilities continue to be used as required for a period of 10 years. The cost depends on the type of instrument selected by the local government. Costs for restrictive covenants are cited *supra*.

Prices on bonds are based on the cost of construction. Examples of bond prices are structured as follows: \$25 per \$1,000 cost up to the first \$100,000, \$15 per \$1,000 cost from \$100,000 to \$500,000 (the maximum grant award).

Travel and per diem for members of the State Library Council is funded by a federal grant through the Library Services and Technology Act. The additional \$2,600 required by the two new members will be paid through federal funds, according to the department.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

**Severability Clause** - The CS contains an unnecessary severability clause in section 23 of the CS. Courts are under a duty to sever unconstitutional provisions from a law and allow the rest of the law to stand if that is possible. They must do so regardless of the lack of a severability clause in the law. This duty springs from the doctrine of separation of powers. Conversely, if it is not possible to sever a provision, courts will not do so even if the law contains a severability clause. It is possible to sever if:

- The expressed legislative purpose can be accomplished independently of the void provisions;
- The valid and invalid provisions are not inseparable;
- An act complete in itself remains after the invalid provisions are stricken; and
- The Legislature would have passed the valid part without the invalid part.<sup>4</sup>

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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<sup>4</sup> See, *Boyd v. Green*, 355 So. 2d 789 (Fla. 1989).



## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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