

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Department of State Cultural and Historical Grants:

Cultural Grants

The Division of Cultural Affairs in the Department of State is responsible for managing Florida's cultural grant programs. The division is assisted in carrying out its duties by advisory groups. The Florida Arts Council, a 15-member advisory board appointed by the Governor, President of the Senate, and Speaker of the House of Representatives, advises the Secretary of State on the distribution of grant awards. The Secretary appoints "Grant Review Panels," composed of artists, arts-related professionals and community cultural leaders, to evaluate requests for funds and make recommendations to the Florida Arts Council. The grants can be divided into fixed capital grants, often referred to as the "list", and program grants.

The fixed capital programs consist of the cultural facilities grants under s. 265.701, F.S., and the regional cultural facilities grants under s. 265.702, F.S.

Another list program that is not fixed capital is the Cultural Endowment Program, under ss. 265.601-265.606, F.S., which provides a state match of \$240,000 to a qualifying organization with a match of \$360,000 for the establishment of an endowment, the interest from which is to be used for operation costs. Currently, 32 qualified organizations are on a waiting list for the Cultural Endowment Program.

All other grants are program grants governed by ss. 265.286, 265.2861, 265.608, and 265.609, F.S. These program grants are briefly described below:

International Cultural Exchange (s. 265.286, F.S.) – Provides assistance for international cultural exchange projects of outstanding artistic and cultural merit.

Challenge Grant Program (s. 265.286, F.S.) – Supports significant projects designed as a new initiative, or a program of an innovative or unique nature and is not intended for continuation programming.

Statewide Arts Grants (s. 265.2861, F.S.) – *Quarterly Assistance Grants* promote professional development for arts organizations within five specified funding categories. *Underserved Arts Communities Assistance Grants* foster the development of arts organizations that are considered underserved in terms of their rural geography, minority composition, or lack of access to arts information or other program-based resources. *Discipline-based Arts Grants (dance, folk arts, interdisciplinary, literature, media arts, multidisciplinary, music, sponsor/presenter, theater, and visual arts)* foster excellence and diversity in the arts for all Floridians. Through general program support and specific grants, the program is dedicated to funding not-for-profit proposals that promote excellence in the arts and make such excellence accessible for community-wide audiences. *Individual Artist Fellowships* recognize practicing, professional, creative Florida artists and provide support for those artists of exceptional talent and demonstrated ability to improve their artistic skills and advance their careers.

Arts in Education Grant (s. 265.2861, F.S.) – Makes life-long learning and quality educational opportunities in the visual, performing, and literary arts available for Florida’s citizens and visitors. Grants are offered under funding components such as Artists Residencies, Partnerships, and School-based Arts Education.

State Touring Grant (s. 265.2861, F.S.) – Brings the state’s finest performing arts groups to as many Florida communities as possible by providing fee support to the presenters of touring companies selected. Priority consideration is given to presenters serving small counties.

Local Arts Agency/State Service Organization Grant (s. 265.2861, F.S.) – Provides general program support to assist in developing their services and programs for local communities or for disciplinary and special needs constituencies.

Cultural Institutions Program Grants (s. 265.2861, F.S.) – Recognizes Florida’s cultural institutions that have displayed a sustained commitment to cultural excellence and have made superior cultural contributions to the state. Grants awarded consider sustained level of artistic/cultural excellence, fiscal stability, governance and management, programs and exhibitions, audience and community support, public outreach programs, and educational programs.

Science Museum Program (s. 265.608, F.S.) – Provides support to public or private nonprofit institutions operating for the primary purpose of sponsoring, producing, and exhibiting programs for the observation and study of various types of natural science and science technology.

Youth and Children’s Museum Program (s. 265.609, F.S.) – Provides support to public or private nonprofit institutions operating for the primary purpose of sponsoring, producing, and exhibiting multidisciplinary, participatory programs oriented toward visitors ages 6 months through 15 years and their families, teachers and caregivers.

Historical Grants

The Division of Historical Resources in the Department of State 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 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 Folklife Program and administration of various archaeological research and preservation programs.

The Florida Historical Commission, appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, performs very specific advisory duties related to historic preservation in the state and to the actions and activities of the division. The Commission is responsible for evaluating, making recommendations on, and placing in priority ranking proposals for awards of “special category historic preservation grants-in-aid” administered by the division. These are submitted to the Secretary of State for submission to the Governor and the Legislature. These particular fixed capital grants are to assist major archaeological excavations, large restoration projects at historic structures, and major museum exhibit projects involving the development and presentation of information on the history of Florida.

The Secretary of State appoints grant review panels, chaired by a member of the Florida Historical Commission or a designee appointed by the Commission’s presiding officer, to review and rank other historic preservation grants-in-aid and historical museum grants.

A description of those types of grants follows:

Historic Preservation Grants (s. 267.0617, F.S.) – The grants program consists of three sub-categories: acquisition and development, survey and planning, and community education. The program assists and encourages the identification, excavation, protection, rehabilitation and public knowledge of historic and archaeological properties in the state. Federal funding augments the state funding provided for these grants.

Historical Museum Grants (s. 267.0619, F.S.) –The grants program provides funding for the development of education exhibits relating to the history of Florida and to assist Florida history museums with basic operational costs. There are two separate grants under this program:

a. *General Operating Support Museum Grants* – Underwrites technical, curatorial, administrative, and educational costs associated with daily management of museum facilities. Nonprofit Florida history museums that are not agencies of the state are eligible.

b. *Public Educational Exhibit Museum Grants* – Provides grants to support development and presentation of exhibitions through text, graphic, or audiovisual elements; artifacts; and educational components. Units of local government, departments or agencies of the state, and public or private profit or non-profit corporations, partnerships, or other organizations are eligible to apply for these grants.

Funding of Cultural and Historical Grants

Prior to 1988, funding for cultural and historical grants programs came primarily from General Revenue and a small percentage from federal grants. From 1988 through 1995, changes were made in law that increased the number of grant programs, as well as those that would receive funding from the Corporations Trust Fund in the Department of State. Dedicated sources from the Corporations Trust Fund were primarily from a \$10 fee on corporate annual reports, a portion of fees collected from fictitious name filings, and a transfer of penalty fees assessed on “foreign” corporations. On October 1, 2001, an additional \$2 million was authorized for cultural grants based on revenues collected through the processing of judgment liens under s. 55.209, F.S. The historical grants had specific provisions identifying amounts from the Corporations Trust Fund to be transferred to fund both the museum and preservation grants.

Chapter 2003-401, Laws of Florida, repealed the Corporations Trust Fund and directed all of the funds be deposited into the General Revenue Fund. No funds, therefore, were directed into the Cultural Institutions Trust Fund for funding of the grants programs in FY 2003-04. In 2004, the Legislature passed SB 976 which re-created the Cultural Institutions Trust Fund that was scheduled to repeal on November 4, 2004. On June 23, 2004, the bill was vetoed by the Governor.

Prior to the repeal of the Corporations Trust Fund, the appropriations for the grants for FY 2002-03 was approximately \$18.1 million. Since the repeal of the Trust Fund, funds have been appropriated from the General Revenue Fund and associated federal funds for the grants for FYs 2003-04, 2004-05, and 2005-06. The total funding for grants for those years was approximately \$8.2 million, \$12.1 million, and \$16.2 million, respectively.¹

Proposed Funding Source for Cultural and Historical Grants

According to the Division of Corporations of the Department of State, the sections of law cited in the bill to be used as a funding source for grants affect the following that are collected by the Division of Corporations:

¹ The funding amounts do not include funding provided for the Florida Endowment for the Humanities. The FY 2002-03 amount also does not include \$500,000 that was provided for the Coconut Grove Playhouse.

- Reinstatement fee for for-profit corporations – s. 607.0122(13), F.S.
- All fees owed by for-profit corporations upon reinstatement (such as annual report fees) – s. 607.1422(1), F.S.
- Consequences for foreign corporations transacting business in the state prior to obtaining authorization – s. 607.1502(4), F.S.
- For-profit corporations annual report late fee – s. 607.193(2)(b), F.S.
- Consequences for foreign limited liability companies transacting business in the state prior to obtaining authorization – s. 608.502, F.S.
- Reinstatement fee for not-for-profit corporations – s. 617.0122(13), F.S.
- All fees owed by not-for-profit corporations upon reinstatement – s. 617.1422(1), F.S.
- Reinstatement of not-for-profit corporations chartered by a county that failed to file for reinstatement with the Department of State in 1992, includes reinstatement fee plus annual report fees back to 1992 – s. 617.1623(1), F.S.

These reinstatement fees, late fees, and penalties have generated the following amount of revenue from July 1, 1998 to June 30, 2005:

- FY 98-99 -- \$19,506,224.10
- FY 99-00 -- \$18,925,589.42
- FY 00-01 -- \$24,449,422.80
- FY 01-02 -- \$22,604,991.98
- FY 02-03 -- \$21,205,292.84
- FY 03-04 -- \$23,396,601.85
- FY 04-05 -- \$22,862,607.37

Beginning July 1, 2003, section 15.09 (4), F.S., required that all funds collected by the Division of Corporations be deposited in the General Revenue Fund.

Cultural Endowment Program (ss. 265.601 – 265.606, F.S.):

The Cultural Endowment Program, described above in the section on cultural grants, requires a qualifying organization to return the \$240,000 state match for the endowment if the organization ceases to exist, files for protection under federal bankruptcy, or willfully expends any portion of the endowment principal. Funds that are returned are required to revert to the General Revenue Fund. The Department of State has expressed concern that the criteria should be broadened to encompass other conditions under which the organization is no longer able to manage the endowment.

Section 265.606(4), F.S., requires the sponsoring organization to submit an annual audit explaining how endowment program funds were used and requires that the organization submit an annual postaudit of its financial accounts by an independent certified public accountant. The Department of State has expressed concern that the second audit requirement is in violation of the Florida Single Audit Act, s. 215.97, F.S., which requires a coordination of auditing efforts when entities are receiving funding from various state agencies. The law also refers to determinations for the primary agency of responsibility for audits. Determinations are based upon thresholds of funding.

Discovery of Florida Quincentennial Commemoration Commission:

In the 2004 Legislative Session, the Department of State and the Division of Historical Resources were given additional responsibilities through the creation of the Discovery of Florida Quincentennial Commemoration Commission which was placed within the department.² The purpose of the Commission is to plan and lead the commemoration of Juan Ponce de Leon's discovery of Florida. This is to be done through the development and implementation of a statewide master plan. The law

² See Chapter 2004-91, L.O.F.

provides for appointment of a Commission and authorizes specific powers and duties relative to the development and implementation of the master plan. Special subcommittees are permitted and an advisory committee is required to assist the Commission in its responsibilities. The Commission must hold its initial meeting no later than January 2007 to organize and begin its work. By January 2008 an initial draft of the master plan must be submitted to the Governor, President of the Senate, and Speaker of the House of Representatives. The master plan must be completed by January 2009. Department and division responsibilities include, but are not limited to, establishment of a citizens support organization to assist in the development and implementation of the master plan and administrative support and consulting services. The responsibilities of the department were contingent upon appropriation. No funding was provided for responsibilities to organize the initial meeting of the Commission, to pay per diem and travel for members, nor to pay for any other administrative costs associated with the Commission.

Effects of Proposed Changes:

Funding of Cultural and Historical Grants

The bill amends the requirement in s. 15.09 (4), F.S., that all funds collected by the Division of Corporations be deposited in General Revenue, to require certain reinstatement fees, late fees, and penalties collected be deposited into the Florida Fine Arts Trust Fund to fund cultural program grants, historic preservation grants, and historical museum grants. Additionally, the bill provides that any funds deposited that are above the amounts specified for the cultural, historic preservation, and historical museum grants will be used to fund the Cultural Endowment Program. If funds should fall below the amount specified to fund the cultural, historic preservation, and historical museum grants, the amount of funds available will be reduced proportionally.

Specifically, the bill provides a dedicated funding source with the amount of monies to be provided to the various categories of grants as follows:

- \$2 million for funding historic preservation grants under s. 267.0617, F.S.
- \$1.75 million for funding historical museum grants under s. 267.0619, F.S.
- \$14.3 million for funding cultural grants under ss. 265.286, 265.2861, 265.608, and 265.609, F.S.
- Any remaining funds will be used to provide state matching funds for the Cultural Endowment Program under ss. 265.601-265.606, F.S..

The grant review and selection process is not changed by the bill.

Cultural Endowment Program

The bill removes the requirement for the submission to the Department of State of an annual postaudit by the local sponsoring organization. The deletion of this additional audit requirement removes potential costs that would be incurred by the department for the audit.

The bill broadens one of the criteria for reversion of the state funding portion of the endowment from ceasing operation to no longer being able to manage the endowment. Additionally, the bill provides that if the state portion of the endowment is returned, it will not revert to the General Revenue Fund. Instead the state portion will be used to fund the next organization on the Cultural Endowment Program priority list that has not previously received an endowment in the most current funding cycle.

Quincentennial Commemoration Commission

The bill also moves 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.³

C. SECTION DIRECTORY:

Section 1. Amends s. 15.09(4), F.S., relating to fees; providing an exception to the requirement that all funds collected by the Division of Corporations of the Department of State must be deposited in the General Revenue Fund; providing that certain reinstatement, late fees, and penalties collected be deposited in the Florida Fine Arts Trust Fund of the Department of State for the purpose of funding certain cultural grants, historical museum grants, and historic preservation matching grants at specified levels; providing that any additional funds be used to fund the Cultural Endowment Program; and, providing a procedure for funding specified programs, if proceeds collected fall below the amounts specified for disbursement according to the legislation.

Section 2. Amends s. 265.606, F.S., relating to the Cultural Endowment Program; deleting a requirement for a postaudit; revising reversion requirements for state funding portion of endowment.

Section 3. Amends s. 267.174, F.S., relating to the Discovery of Florida Quincentennial Commemoration Commission; revising dates.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

For FY 06-07, the loss to General Revenue is expected to be (\$21.85) million in recurring funds.

2. Expenditures:

For FY 06-07, the recurring expenditures are estimated to be as follows:

Cultural Grants	\$14.30M
Historic Preservation Grants	\$ 2.00M
Historical Museum Grants	\$ 1.75M
Cultural Endowment	<u>\$ 3.80M</u>
TOTAL	\$21.85M

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

³ Section 267.174, F.S., requires that the initial meeting of the Commission be no later than January 31, 2007, the initial draft of the master plan be submitted to the Legislature by January 2008, and the master plan be submitted by January 2009. The quincentennial celebration will not be until 2013.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There would be a positive economic impact on the private sector, both the arts, museum, and historical grant recipients, as well as the businesses that could be impacted by increased visitation to and participation in cultural and historical programs.

D. FISCAL COMMENTS:

The estimates provided above are based upon an average of the seven years of collections for the categories of funding sources cited in the bill. The actual total dollar amount could be slightly more or less than the \$21.85 million projected. According to the Department of State, over the last seven years funds collected from the specified categories have been as follows: \$19,506,224.10 in FY 98-99; \$18,925,589.42 in FY 99-00; \$24,449,422.80 in FY 2000-01; \$22,604,991.98 in FY 01-02; \$21,205,292.84 in FY 02-03; \$23,396,601.85 in FY 03-04; and, \$22,862,607.37 in FY 04-05.

Prior to the repeal of the Corporations Trust Fund, the appropriations for the grants for FY 2002-03 was approximately \$18.1 million. Since the repeal of the Trust Fund, funds have been appropriated from the General Revenue Fund and associated federal funds for the grants for FYs 2003-04, 2004-05, and 2005-06. The total funding for grants for those years was approximately \$8.2 million, \$12.1 million, and \$16.2 million, respectively.

The provision of a dedicated source of revenue as provided by the bill will have a potential positive fiscal impact on local governments. Many local governments receive funding through the cultural and historical program grants to be funded through the bill for local cultural programs, museums, and historical programs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None specified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 7, 2006, the Tourism Committee unanimously passed PCB TURS 05-01 as amended. The two technical amendments to the proposed committee bill were as follows:

- On line 53, the name of the trust fund was corrected to reflect the appropriate trust fund into which money is to be deposited.
- The numbering of sections was corrected.