

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/29/21 H4/13/21

A Bill

SENATE BILL 553

By: Senators M. Johnson, B. Ballinger, Beckham, Caldwell, A. Clark, J. English, T. Garner, Gilmore, K. Hammer, Hill, B. Johnson, Rapert, G. Stubblefield, D. Sullivan, D. Wallace

By: Representatives Payton, Beck, Cozart, Lowery, Ray

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS STATE CAPITOL AND HISTORICAL MONUMENT PROTECTION ACT; *TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

TO CREATE THE ARKANSAS STATE CAPITOL AND HISTORICAL MONUMENT PROTECTION ACT; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 22, Chapter 3, is amended to add an additional subchapter to read as follows:

Subchapter 21 – Arkansas State Capitol and Historical Monument Protection Act

22-3-2101. Title.

This subchapter shall be known and may be cited as the "Arkansas State Capitol and Historical Monument Protection Act".

22-3-2102. Definitions.

As used in this subchapter:

(1)(A) "Historical monument" means a statue, memorial, gravestone plate, plaque, or historic flag display that is located:

(i) On public property and was installed, erected for, or named or dedicated in honor of a historical person, historical event, public



service organization, firefighter, police officer, military organization, or military unit, including without limitation:

- (a) The French and Indian War;
- (b) The American Revolution;
- (c) The War of 1812;
- (d) The Mexican-American War;
- (e) The American Civil War;
- (f) The Spanish-American War;
- (g) The Mexican Border War;
- (h) World War I;
- (i) World War II;
- (j) The Korean conflict;
- (k) The Vietnam War;
- (l) Operation Urgent Fury;
- (m) Operation El Dorado Canyon;
- (n) Operation Just Cause;
- (o) The Gulf War;
- (p) Operation Enduring Freedom; and
- (q) Operation Iraqi Freedom;

(ii) On public property and has been listed on the National Register of Historic Places; or

(iii) In a veterans' cemetery.

(B) "Historical monument" does not include:

- (i) A Temporary exhibit;
- (ii) A Temporary structure;
- (iii) A street sign; or
- (iv) Public property of the State Highway

Commission;

(2) "Memorial" means an identifiable place that is set aside for the purpose of preserving the memory of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit;

(3) "Person" means an individual or entity;

(4) "Public property" means all real or personal property owned or leased by the state, a county, a municipality, or any other entity or subdivision of the state, a county, or a municipal entity that is created by

an act of the General Assembly to perform a public function; and

(5) "State Capitol" means the land, parking areas, and streets surrounding the State Capitol Building, the Capitol Hill Apartments building, the Grounds Operations shop, and other land that is maintained by the Secretary of State.

22-3-2103. Preservation of State Capitol.

(a) The State Capitol shall not be vandalized, damaged, destroyed, or otherwise disturbed.

(b) Subsection (a) of this section does not prohibit a governmental entity having responsibility for maintaining the State Capitol from taking proper and appropriate measures, and exercising proper and appropriate means, for the protection, preservation, care, repair, or restoration of the State Capitol.

(c) Subsection (a) of this section does not prohibit a public utility from performing work on the State Capitol if the public utility:

(1) Exercises proper and appropriate means for the protection, preservation, care, repair, or restoration of the State Capitol; and

(2) Coordinates the work with the Secretary of State or the Capitol Arts and Grounds Commission.

22-3-2104. Preservation of historical monuments.

(a)(1) A historical monument shall not be relocated, vandalized, damaged, destroyed, removed, altered, renamed, rededicated, or otherwise disturbed.

(2) Subdivision (a)(1) of this section does not prohibit a governmental entity having responsibility for maintaining a historical monument from:

(A) Taking proper and appropriate measures, and exercising proper and appropriate means, for the protection, preservation, care, repair, or restoration of the historical monument; and

(B) Temporarily removing or relocating the historical monument to repair public property or any public infrastructure surrounding the historical monument if the governmental entity:

(i) Removes or relocates the historical monument for less than sixty (60) days; and

(ii) Ensures the protection of the historical monument while the historical monument is removed or relocated.

(3) Subdivision (a)(1) of this section does not prohibit a local government entity from removing, storing, stabilizing, altering, or otherwise displacing a historical monument to install, relocate, repair, or alter public infrastructure if:

(A) The local government entity exercises proper and appropriate means for the protection, preservation, care, repair, or restoration of the historical monument;

(B) The historical monument is removed or relocated for less than sixty (60) days;

(C) A waiver is obtained from the Arkansas History Commission to remove or relocate the historical monument for a period of time greater than sixty (60) days; and

(D) The public utility ensures the protection of the historical monument while the historical monument is removed or relocated.

(4) A person shall not install, erect, name, or dedicate a new historical monument that impedes the use of a public right-of-way or utility easement.

(5) Subdivision (a)(1) of this section does not apply to the replacement or repair of a frayed, soiled, or damaged flag that is part of a historic flag display if the frayed, soiled, or damaged flag is replaced with a similar flag.

(b)(1) An entity exercising control of public property that is itself a historical monument or on which a historical monument is situated may petition the Arkansas History Commission for a waiver from the requirements of subdivision (a)(1) of this section.

(2) A petition for a waiver authorized by subdivision (b)(1) of this section shall:

(A) Be in writing; and

(B) State the reason the waiver is necessary.

(3) The Arkansas History Commission may:

(A) Grant a petition for a waiver by a majority vote of those present and voting at a regularly scheduled Arkansas History Commission meeting; and

(B) Include reasonable conditions and instructions to

ensure that the historical monument is preserved to the greatest extent possible.

(c) Subsection (b) of this section does not apply to the Capitol Arts and Grounds Commission or the office of the Secretary of State.

(d) A governmental entity may request an advisory opinion from the Arkansas History Commission of whether a statue, memorial, gravestone plate, plaque, or historic flag display qualifies as a historical monument under this subchapter.

(e) A governmental entity shall request a waiver from the Arkansas History Commission for a historical monument that previously has been removed but is still in the possession of a governmental entity to determine the disposition of the historical monument under subdivision (f)(1) of this section.

(f)(1) If a waiver is granted by the Arkansas History Commission for the removal of a historical monument, the waiver shall include directions for the disposition of the historical monument and may include without limitation the:

(A) Return of the historical monument to the donor of the historical monument or the donor's heirs or assigns;

(B) Return of the historical monument to an organization that donated the historical monument or the organization's successor or assigns;

(C) Donation of the historical monument to a public entity; or

(D) Donation or public sale of the historical monument to a private entity.

(2) If a waiver is granted to remove a historical monument or a waiver is granted to allow the disposition of a historical monument that has been removed, title to the removed historical monument shall be transferred to the entity receiving the historical monument under subdivision (f)(1) of this section.

22-3-2105. Applicability.

(a) A petition for a waiver may be authorized under § 22-3-2104(b) if the application of this subchapter interferes with the construction, maintenance, or operation of a public facility owned or managed by the

Department of Parks, Heritage, and Tourism.

(b) A court of competent jurisdiction may enjoin any violation of or noncompliance with the provisions of this subchapter upon petition by a resident of the State of Arkansas or by the Arkansas History Commission.

(c)(1) A historical monument in existence on the effective date of this act is considered a historical monument for the purposes of this subchapter.

(2) A historical monument not currently displayed by a public entity is considered a historical monument for the purposes of this subchapter.

(d) A governmental entity may request that the commission recognize a statue, memorial, gravestone plate, plaque, or historic flag display erected and dedicated after the effective date of this act as a historical monument by an application process established by the rules of the commission.

(e) The commission shall promulgate rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to:

(1) Establish a process for the application for a waiver;

(2) Create a process for the approval of a temporary waiver on an emergency basis;

(3) Establish guidelines regarding what will be designated as a historical monument;

(4) Create an application process for registering historical monuments erected after the effective date of this section;

(5) Establish guidelines for the disposition of historical monuments if a waiver is granted to remove a historical monument; and

(6) Otherwise effectuate the purposes of this subchapter.

22-3-2106. Penalty.

A person who knowingly violates this subchapter upon conviction is guilty of a:

(1) Class A misdemeanor if:

(A) The value of the property is more than five hundred dollars (\$500); and

(B) The damage or repair cost to the historical monument is more than one hundred dollars (\$100); and

(2) Class D felony if the person has been previously convicted

of a Class A misdemeanor under this subchapter and:

(A) The value of the property is more than one thousand dollars (\$1,000); or

(B) The damage or repair cost to the historical monument is more than one thousand dollars (\$1,000).

SECTION 2. DO NOT CODIFY. Rules implementing this act.

(a) The Arkansas History Commission shall promulgate rules necessary to implement this act.

(b)(1) When adopting the initial rules to implement this act, the final rules shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before January 1, 2022; or

(B) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(2) The Arkansas History Commission shall file the proposed rules with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the State Capitol, monuments, and veterans' cemeteries suffered extensive vandalism during the past year; that the State Capitol and other historical monuments require additional protection; that the historical monuments have an irreplaceable value to the people of Arkansas who wish to preserve these venerated treasures; and that this act is immediately necessary because there is a continuing and imminent threat to historical monuments, and the preservation of these historical monuments protects the public peace. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is

overridden, the date the last house overrides the veto.

/s/M. Johnson