

BILL ANALYSIS

C.S.H.B. 1359
By: White
Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that there has been a recent increase in vandalism and attempted removal of Texas historical monuments. C.S.H.B. 1359 seeks to address this issue by providing for a criminal offense for the unauthorized removal, relocation, or alteration of a monument or memorial.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1359 amends the Government Code to change the heroes for whom a state monument or memorial may be erected from Texas heroes of the Confederate States of America or the Texas War for Independence to heroes of a war or military conflict of Texas or of the United States, including the Texas War for Independence; to specify that the land owned or acquired by the state on which a state monument or memorial may be erected includes land owned or acquired by an institution of higher education; and to include private property or land owned by a foreign country as private property or land on which a state monument or memorial may be erected. The bill expands the pool of eligible persons whose graves may be located and marked from only Texans to Texas heroes. The bill transfers the duties relating to monuments and memorials imposed on the Texas Facilities Commission to the Texas Historical Commission. The bill replaces the statutory provision providing for the maintenance of a monument or memorial for the commemoration of the centenary of Texas' independence with a provision providing for the maintenance of a monument or memorial for the commemoration of the Texas War for Independence and requires the Texas Historical Commission to maintain all other applicable monuments.

C.S.H.B. 1359 revises the definition of "monument or memorial" for removal, relocation, and alteration purposes. The bill specifies that the removal, relocation, or alternation of a monument or memorial for the accommodation of certain construction, repair, or improvements is as authorized by the Texas Historical Commission; specifies that the prominent location to which a monument or memorial that is permanently removed for such accommodation is a prominent location approved by the legislature, the Texas Historical Commission, or the State Preservation Board or approved as otherwise provided by state or federal law; and specifies that such prominent location be an equally prominent location. The bill creates an offense for a person

who intentionally removes, relocates, or alters a monument or memorial in a manner that violates applicable provisions and makes such an offense punishable by a fine in an amount not less than \$50 and not more than \$1,000 and by confinement in jail for a term of not less than three days and not more than one year.

C.S.H.B. 1359 amends the Local Government Code to authorize a monument or memorial to be erected on land owned or acquired by a county and to require the Texas Historical Commission, before the production of a new monument or memorial to be located on county property, to approve the form, dimensions, and substance of, and inscriptions or illustrations on, the monument or memorial. The bill restricts the entities authorized to remove, relocate, or alter a monument or memorial located on county property to the Texas Historical Commission, the State Preservation Board, or by another person in a manner otherwise provided by law as necessary to accommodate construction, repair, or improvements to the monument or memorial or to the surrounding county property on which the monument or memorial is located. The bill requires any such monument or memorial that is permanently removed to be relocated to a prominent location that is approved by the Texas Historical Commission or the State Preservation Board or as otherwise provided by law. The bill creates an offense for a person who intentionally removes, relocates, or alters a monument or memorial in a manner that violates these provisions and makes such an offense punishable by a fine in an amount not less than \$50 and not more than \$1,000 and by confinement in jail for a term of not less than three days and not more than one year.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1359 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. This Act may be cited as the Texas Hero Protection Act.

SECTION 2. Section 2166.501, Government Code, is amended to read as follows:

Sec. 2166.501. MONUMENTS AND MEMORIALS. (a) A monument or memorial for [Texas] heroes of the Confederate States of America or the Texas War for Independence or to commemorate another event or person of historical significance to Texans and this state may be erected on land owned or acquired by the state or,

if a suitable contract can be made for permanent preservation of the monument or

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 2166.501, Government Code, is amended to read as follows:

Sec. 2166.501. MONUMENTS AND MEMORIALS. (a) A monument or memorial for [Texas] heroes of a war or military conflict of Texas or of the United States, including [the Confederate States of America or] the Texas War for Independence, or to commemorate another event or person of historical significance to Texans and this state, may be erected on land owned or acquired by the state, including land owned or acquired by an institution of higher education, as defined by Section 61.003, Education Code, or,

if a suitable contract can be made for permanent preservation of the monument or

memorial, on private property or land owned by the federal government, another state of the United States, or a foreign country [~~or other states~~].

(b) The graves of Texas heroes [~~Texans~~] described by Subsection (a) may be located and marked.

(c) The Texas Historical Commission [~~commission~~] shall maintain a monument or memorial erected by this state to commemorate the centenary of Texas' independence.

(d) Before the erection of a new monument or memorial, the Texas Historical Commission [~~commission~~] must approve [~~obtain the approval of the Texas Historical Commission regarding~~] the form, dimensions, and substance of, and inscriptions or illustrations on, the monument or memorial.

SECTION 3. Sections 2166.5011(a) and (c), Government Code, are amended to read as follows:

(a) In this section, "monument or memorial" means a permanent monument, memorial, or other item officially designated as an item of historical significance by a governmental entity [~~designation~~], including a statue, portrait, plaque, seal, symbol, building name, or street name, that:

(1) is located on state property or other property described by Section 2166.501(a); and

(2) honors a hero [~~citizen~~] of this state described by Section 2166.501(a) for military, [~~or~~] war-related, or other historical service.

(c) A monument or memorial may be removed, relocated, or altered in a manner otherwise provided by this code as necessary to accommodate construction, repair, or improvements to the monument or memorial or to the surrounding [~~state~~] property on which the monument or memorial is located. Any monument or memorial that is permanently removed under this subsection must be relocated to a prominent location that is approved by the legislature, the Texas Historical

memorial, on private property or land owned by the federal government, another state of the United States, or a foreign country [~~or other states~~].

(b) The graves of Texas heroes [~~Texans~~] described by Subsection (a) may be located and marked.

(c) The Texas Historical Commission [~~commission~~] shall maintain a monument or memorial erected by this state to commemorate the Texas War for Independence and shall maintain all other monuments described by Subsection (a) that are erected on land described by that subsection [~~centenary of Texas' independence~~].

(d) Before the erection of a new monument or memorial, the Texas Historical Commission [~~commission~~] must approve [~~obtain the approval of the Texas Historical Commission regarding~~] the form, dimensions, and substance of, and inscriptions or illustrations on, the monument or memorial.

SECTION 3. Sections 2166.5011(a) and (c), Government Code, are amended to read as follows:

(a) In this section, "monument or memorial" means a permanent monument, memorial, or other item officially designated as an item of historical significance by a governmental entity [~~designation~~], including a statue, portrait, plaque, seal, symbol, tablet, building name, place name, or street name, that:

(1) is located on state property or other property described by Section 2166.501(a); and

(2) honors a hero or event [~~citizen~~] of this state described by Section 2166.501(a) for military, [~~or~~] war-related, or other historical service or significance.

(c) A monument or memorial may be removed, relocated, or altered in a manner otherwise provided by this code as necessary to accommodate construction, repair, or improvements to the monument or memorial or to the surrounding [~~state~~] property on which the monument or memorial is located and as authorized by the Texas Historical Commission. Any monument or memorial that is permanently removed under this subsection must be relocated to an equally [~~a~~] prominent

Commission, or the State Preservation Board or approved as otherwise provided by state or federal law.

SECTION 4. Subchapter K, Chapter 2166, Government Code, is amended.

SECTION 5. Article 42.01, Code of Criminal Procedure, is amended by adding Section 12 to read as follows:

Sec. 12. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.01991.

SECTION 6. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.01991 to read as follows:

Art. 42.01991. FINDING REGARDING OFFENSE RELATED TO MONUMENT OR MEMORIAL. (a) In the trial of an offense described by Section 802.004, Government Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the offense was committed by a defendant who is a member of a public retirement system.

(b) A judge that makes the affirmative finding described by this article shall make the determination and enter the order required by Section 802.004(i), Government Code.

SECTION 7. Section 22.085, Education Code, is amended by adding Subsection (a-1) and amending Subsections (c) and (e) to read as follows:

(a-1) A school district, open-enrollment charter school, or shared services arrangement shall discharge or refuse to hire an employee or applicant for employment if the district, school, or shared services arrangement obtains information through a criminal history record information review that the employee or applicant has been convicted of an offense under Section 2166.5012, Government Code.

(c) A school district, open-enrollment charter school, or shared services arrangement may not allow a person who is an employee of or applicant for employment by an entity that contracts with the district, school, or shared services arrangement to

location that is approved by the legislature, the Texas Historical Commission, or the State Preservation Board or approved as otherwise provided by state or federal law.

SECTION 4. Substantially the same as introduced version.

No equivalent provision.

No equivalent provision.

No equivalent provision.

serve at the district or school or for the shared services arrangement if the district, school, or shared services arrangement obtains information described by Subsection (a) or (a-1) through a criminal history record information review concerning the employee or applicant. A school district, open-enrollment charter school, or shared services arrangement must ensure that an entity that the district, school, or shared services arrangement contracts with for services has obtained all criminal history record information as required by Section 22.0834.

(e) The State Board for Educator Certification may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of an offense described by Subsection (a) or (a-1).

SECTION 8. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.980 to read as follows:

No equivalent provision.

Sec. 51.980. EMPLOYEES AND APPLICANTS CONVICTED OF CERTAIN OFFENSE. (a) In this section, "employee" means any person employed by an institution of higher education in an executive, administrative, or clerical capacity, as a professor or instructor, or in any similar capacity.

(b) An institution of higher education shall discharge or refuse to hire an employee or applicant for employment if the institution of higher education obtains information through a criminal history record information review that the employee or applicant has been convicted of an offense under Section 2166.5012, Government Code.

(c) An institution of higher education may not allow a person who is an employee of or applicant for employment by an entity that contracts with the institution to serve at the institution if the institution obtains information described by Subsection (b) through a criminal history record information review concerning the employee or applicant.

(d) The Texas Higher Education Coordinating Board may impose a sanction

on an institution of higher education that does not discharge an employee or refuse to hire an applicant the institution knows or should have known, through a criminal history record information review, has been convicted of an offense described by Subsection (b).

SECTION 9. Section 141.001(a), Election Code, is amended to read as follows:

(a) To be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must:

- (1) be a United States citizen;
- (2) be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable;
- (3) have not been determined by a final judgment of a court exercising probate jurisdiction to be:

- (A) totally mentally incapacitated; or
- (B) partially mentally incapacitated without the right to vote;

(4) have not been finally convicted of any [a] felony or of an offense under Section 2166.5012 from which the person has not been pardoned or otherwise released from the resulting disabilities;

(5) have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:

(A) for a candidate whose name is to appear on a general primary election ballot, the date of the regular filing deadline for a candidate's application for a place on the ballot;

(B) for an independent candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot;

(C) for a write-in candidate, the date of the election at which the candidate's name is written in;

(D) for a party nominee who is nominated by any method other than by primary election, the date the nomination is made; and

(E) for an appointee to an office, the date the appointment is made;

(6) on the date described by Subdivision (5), be registered to vote in the territory from which the office is elected; and

(7) satisfy any other eligibility requirements prescribed by law for the office.

No equivalent provision.

SECTION 10. Subtitle A, Title 6, Government Code, is amended by adding Chapter 620 to read as follows:

CHAPTER 620. INELIGIBILITY FOR OFFICE OR EMPLOYMENT

Sec. 620.001. DEFINITIONS. In this chapter:

(1) "Employee" means an individual who is an officer or employee of a governmental entity.

(2) "Governmental entity" means a state agency in the executive, judicial, or legislative branch of state government or a political subdivision of this state, including a special-purpose district or authority.

Sec. 620.002. PROHIBITED EMPLOYMENT. (a) A governmental entity shall discharge or refuse to hire an employee or applicant for employment if the governmental entity obtains information through a criminal history record information review that the employee or applicant has been convicted of an offense under Section 2166.5012, Government Code.

(b) A governmental entity may not allow a person who is an employee of or applicant for employment by a person that contracts with the entity to serve at the entity if the entity obtains information described by Subsection (a) through a criminal history record information review concerning the employee or applicant.

No equivalent provision.

SECTION 11. Subchapter A, Chapter 802, Government Code, is amended by adding Section 802.004 to read as follows:

Sec. 802.004. CERTAIN EMPLOYEES AND ANNUITANTS INELIGIBLE FOR RETIREMENT ANNUITY; RESUMPTION OR RESTORATION OF ELIGIBILITY. (a) This section applies only to a person who:

(1) is a member or an annuitant of a public retirement system; and

(2) either:

(A) holds or has held an elective or appointed office included in the coverage of that public retirement system; or

(B) is employed or has been employed in a position included in the coverage of that public retirement system.

(b) To the extent ordered by a court under Subsection (i), a person is not eligible to receive a full service retirement annuity

No equivalent provision.

from a public retirement system if the person is finally convicted of an offense under Section 2166.5012.

(c) To the extent ordered by a court under Subsection (i), the public retirement system shall suspend making full annuity payments to a person who is not eligible to receive a full service retirement annuity under Subsection (b) on receipt by the retirement system of notice and terms of the person's conviction.

(d) The public retirement system shall resume making full annuity payments if the person made ineligible for a full annuity under Subsection (b):

(1) is subsequently found to be not guilty of the offense; or

(2) meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code.

(e) The public retirement system as applicable shall:

(1) for a person whose full annuity payments are resumed under Subsection (d), reimburse the person for any portion of the annuity payments withheld during a period of suspension; or

(2) restore the full eligibility of a person convicted of an offense described by Subsection (b) to receive a service retirement annuity, including the restoration of all service credits accrued by the person before the conviction, if the person satisfies the condition under Subsection (d)(1) or (2).

(f) Except as provided by Subsection (g), a person who is not eligible to receive a full service retirement annuity under Subsection (b) is entitled to request and receive a refund of the person's retirement annuity contributions, not including any interest earned on those contributions. A person who accepts a refund under this subsection terminates the person's membership in the public retirement system.

(g) Benefits payable to an alternate payee under Chapter 804, including a spouse or dependent child, are not affected by a person's ineligibility to receive a full service retirement annuity under Subsection (b).

(h) The governing body of a public retirement system shall adopt rules and procedures to implement this section.

(i) A court shall:

(1) determine and order as applicable for a person convicted of an offense described by

Subsection (b) the amount by which the person's:

(A) service retirement annuity payments are to be reduced; or

(B) accrued service credits are to be reduced; and

(2) notify the affected public retirement system of the terms of a conviction ordered under Subdivision (1).

No equivalent provision.

SECTION 5. Subtitle B, Title 10, Local Government Code, is amended by adding Chapter 328 to read as follows:

CHAPTER 328. MONUMENTS AND MEMORIALS

Sec. 328.001. DEFINITION. In this chapter, "monument or memorial" means a permanent monument, memorial, or other item officially designated as an item of historical significance by a governmental entity, including a statue, portrait, plaque, seal, symbol, tablet, building name, place name, or street name, located on county property and that:

(1) honors a citizen of this state for military or war-related service;

(2) honors heroes of a war or conflict of Texas or of the United States, including the Texas War for Independence; or

(3) commemorates another event or person of historical significance to this state.

Sec. 328.002. ESTABLISHMENT OF MONUMENT OR MEMORIAL. (a) A monument or memorial may be erected on land owned or acquired by a county of this state.

(b) Before the production of a new monument or memorial, the Texas Historical Commission must approve the form, dimensions, and substance of, and inscriptions or illustrations on, the monument or memorial.

Sec. 328.003. REMOVAL, RELOCATION, OR ALTERATION OF MONUMENT OR MEMORIAL. (a) Notwithstanding any other law, a monument or memorial may be removed, relocated, or altered only by:

(1) the Texas Historical Commission;

(2) the State Preservation Board; or

(3) another person as provided by Subsection (b).

(b) A monument or memorial may be removed, relocated, or altered in a manner otherwise provided by law as necessary to

accommodate construction, repair, or improvements to the monument or memorial or to the surrounding county property on which the monument or memorial is located. Any monument or memorial that is permanently removed under this subsection must be relocated to a prominent location that is approved by the Texas Historical Commission or the State Preservation Board or as otherwise provided by law.

Sec. 328.004. CRIMINAL OFFENSE. (a) A person commits an offense if the person intentionally removes, relocates, or alters a monument or memorial in a manner that violates Section 328.003.

(b) An offense under Subsection (a) is punishable by:

(1) a fine in an amount not less than \$50 and not more than \$1,000; and

(2) confinement in jail for a term of not less than three days and not more than one year.

SECTION 12. Section 2166.502, Government Code, is repealed.

SECTION 13. On the effective date of this Act, the duties imposed on the Texas Facilities Commission under Section 2166.501, Government Code, immediately before the effective date of this Act are transferred to the Texas Historical Commission.

SECTION 14. This Act takes effect September 1, 2017.

No equivalent provision.

SECTION 6. On the effective date of this Act, the duties imposed on the Texas Facilities Commission under Section 2166.501, Government Code, as it existed immediately before the effective date of this Act, are transferred to the Texas Historical Commission.

SECTION 7. Same as introduced version.