

BILL ANALYSIS

C.S.H.B. 583
By: White
Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the recent increase in attempted removals of Texas historical monuments and memorials. C.S.H.B. 583 seeks to address these concerns by setting out provisions relating to the removal, relocation, alteration, or construction of certain monuments or memorials located on public property and providing for a civil penalty.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Historical Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 583 amends the Government Code to revise provisions relating to the removal, relocation, or alteration of a monument or memorial located on state property. The bill removes provisions that do the following:

- authorize a monument or memorial to be removed, relocated, or altered only by the legislature, the Texas Historical Commission, or the State Preservation Board;
- authorize a monument or memorial to be removed, relocated, or altered in a manner otherwise provided by the Government 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
- require any monument or memorial that is permanently removed as such to be relocated to a prominent location.

The bill replaces those provisions with provisions that do the following:

- prohibit a monument or memorial that is located on state property for at least 40 years from being removed, relocated, or altered;
- authorize a monument or memorial that is located on state property for at least 20 years but less than 40 years to be removed, relocated, or altered only by approval of a concurrent resolution authorizing the removal, relocation, or alteration, including alteration to maintain historical accuracy, by a two-thirds vote of the members of each house of the legislature;
- authorize a monument or memorial that is located on state property for less than 20 years to be removed, relocated, or altered, including alteration to maintain historical accuracy, only by the legislature;

- authorize an additional monument or memorial to be added to the surrounding state property on which a monument or memorial is located to complement or contrast with the monument or memorial; and
- revise the applicable definition of "monument or memorial."

C.S.H.B. 583 amends the Local Government Code to set out provisions that do the following:

- prohibit a monument or memorial that is located on municipal or county property for at least 40 years from being removed, relocated, or altered;
- authorize a monument or memorial that is located on municipal or county property for at least 20 years but less than 40 years to be removed, relocated, or altered, including alteration to maintain historical accuracy, only by approval of a majority of the voters of the municipality or county, as applicable, voting at an election held for that purpose;
- authorize a monument or memorial that is located on municipal or county property for less than 20 years to be removed, relocated, or altered, including alteration to maintain historical accuracy, only by the governing body of the municipality or the commissioners court of the county, as applicable;
- authorize an additional monument or memorial to be added to the surrounding municipal or county property on which a monument or memorial is located to complement or contrast with the monument or memorial; and
- provide for the applicable definition of "monument or memorial."

C.S.H.B. 583 amends the Government Code and the Local Government Code to authorize a Texas resident, as applicable, to file a complaint with the attorney general if the resident asserts facts supporting an allegation that an applicable entity has violated the bill's provisions regarding the removal, relocation, or alteration of a monument or memorial. The bill requires the resident to include a sworn statement with the complaint stating that to the best of the resident's knowledge all of the facts asserted in the complaint are true and correct. The bill authorizes the attorney general, if the attorney general determines that the complaint is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in an applicable district court to compel the entity to comply with the applicable bill provision. The bill subjects an entity that is found by a court as having intentionally violated the applicable bill provision to a civil penalty in an amount of:

- not less than \$1,000 and not more than \$1,500 for the first violation; and
- not less than \$25,000 and not more than \$25,500 for each subsequent violation.

The bill establishes that each day of a continuing violation constitutes a separate violation for purposes of the civil penalty, requires the court that hears the action brought against the entity to determine the amount of the civil penalty, and requires the collected civil penalty to be deposited to the credit of the general revenue fund. The bill provides for the certain waiver and abolishment of sovereign and governmental immunity.

C.S.H.B. 583 amends the Government Code to authorize the Texas Historical Commission to use distributions from the Texas preservation trust fund account to provide financial assistance to public or private entities for the construction of an additional monument or memorial that may be added to surrounding property on which a monument or memorial is located to complement or contrast with the monument or memorial as provided by the bill.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 583 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute treats the removal, relocation, alteration, or construction of a general category of monuments or memorials located on public property. The substitute includes provisions:

- setting out a decision scheme relating to the removal, relocation, or alteration of an applicable monument or memorial based on how long the memorial or monument has been located on the applicable property;
- revising the role of the Texas Historical Commission and the State Board of Preservation;
- relating to complaint procedures, equitable relief, and civil penalties for certain violations relating to monuments or memorials located on state, county, or municipal property; and
- relating to the waiver and abolishment of sovereign and governmental immunity.

The substitute authorizes the Texas Historical Commission to use distributions from the Texas preservation trust fund account to provide financial assistance to public or private entities for the construction of an additional monument or memorial that may be added to surrounding property on which a monument or memorial is located to complement or contrast with the monument or memorial as provided by the bill.

The substitute does not include provisions:

- authorizing the bill to be cited as the Texas Hero Protection Act;
- specifying treatment of monument or memorial for heroes of a war or military conflict of Texas or of the United States;
- transferring certain duties of the Texas Facilities Commission to the Texas Historical Commission; and
- creating criminal offenses.