

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1663
By: Creighton
Natural Resources & Economic Development
4/25/2019
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recent attempts across this nation and even in the State of Texas to remove valuable pieces of the past from the public show a deliberate disdain for our state's unique history. Texas should not shy away from our history, we should learn from it. S.B. 1663 will open up the Texas Preservation Trust Fund Account to be used for the erection of additional monuments as well as create a process for which monuments, cenotaphs, structures, plaques, statues, etc. may be altered, removed, or relocated. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1663 amends current law relating to the removal, relocation, alteration, or construction of certain monuments, memorials, or designations located on public property, and authorizes a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 442.015(b), Government Code, to authorize the Texas Historical Commission (THC) to use distributions from the Texas preservation trust fund account to provide financial assistance to public or private entities for the acquisition, survey, restoration, or preservation, or for planning and educational activities leading to the preservation, of historic property in the state that is listed in the National Register of Historic Places or designated as a State Archeological Landmark or Recorded Texas Historic Landmark, or that THC determines is eligible for such listing or designation or for the construction of a monument or memorial described by Section 2166.5011(c) or by Section 338.003, Local Government Code.

SECTION 2. Amends Section 2166.5011, Government Code, as follows:

Sec. 2166.5011. New heading: REMOVAL, RELOCATION, ALTERATION, OR CONSTRUCTION OF A MONUMENT OR MEMORIAL. (a) Redefines "monument or memorial" to mean a permanent monument, memorial, or other designation, including a statue, portrait, plaque, seal, symbol, cenotaph, building name, bridge name, park name, area name, or street name, that:

(1) makes no changes to this subdivision; and

(2) honors an event or person of historic significance, rather than honors a citizen of this state for military or war-related service.

(b) Provides that a monument or memorial that has been located on state property, notwithstanding any other provision of this code and except as provided by Section 2166.5012:

(1) for at least 25 years may 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; or

(2) for less than 25 years may be removed, relocated, or altered only by formal action of the governing body of or the single state officer who governs the state agency that erected the monument or memorial, rather than may be removed, relocated, or altered only by the legislature, by THC, by the State Preservation Board, or as provided by Subsection (c).

(c) Authorizes 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, rather than authorizing a monument or memorial to 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. Deletes existing text requiring any monument or memorial that is permanently removed under this subsection to be relocated to a prominent location.

(d) Provides that, notwithstanding Section 2166.003 (Exceptions), this section applies to a monument or memorial on property of an institution of higher education, as defined by Section 61.003 (Definitions), Education Code.

SECTION 3. Amends Subchapter K, Chapter 2166, Government Code, by adding Sections 2166.5012 and 2166.5015, as follows:

Sec. 2166.5012. CERTAIN DESIGNATIONS BY INSTITUTIONS OF HIGHER EDUCATION. (a) Defines "designation" and "institution of higher education" for purposes of this section.

(b) Authorizes an institution of higher education, notwithstanding Section 2166.003, to rename or alter a designation only if:

(1) the governing board of the institution of higher education has previously adopted rules providing for the naming, renaming, or altering of a designation in recognition of philanthropic gifts to the institution; and

(2) the renaming or alteration is approved by the governing board.

Sec. 2166.5015. COMPLAINT; EQUITABLE RELIEF; CIVIL PENALTY. (a) Authorizes a resident of this state to file a complaint with the Texas attorney general (attorney general) if the resident asserts facts supporting an allegation that an entity has violated Section 2166.5011(b) or 2166.5012. 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.

(b) Authorizes the attorney general, if the attorney general determines that a complaint filed under Subsection (a) against an entity is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County to compel the entity that is suspected of violating Section 2166.5011(b) or 2166.5012 to comply with those sections.

(c) Provides that an entity that is found by a court as having intentionally violated Section 2166.5011(b) or 2166.5012 is subject to a civil penalty in an amount of:

(1) not less than \$1,000 and not more than \$1,500 for the first violation; and

(2) not less than \$25,000 and not more than \$25,500 for each subsequent violation.

(d) Provides that each day of a continuing violation of Section 2166.5011(b) or 2166.5012 constitutes a separate violation for purposes of a civil penalty under this section.

(e) Requires the court that hears an action brought under this section against an entity to determine the amount of the civil penalty.

(f) Requires a civil penalty collected under this section to be deposited to the credit of the general revenue fund.

(g) Provides that sovereign immunity of this state to suit is waived and abolished to the extent of liability created by this section.

SECTION 4. Amends Subtitle C, Title 10, Local Government Code, by adding Chapter 338, as follows:

CHAPTER 338. MONUMENTS AND MEMORIALS

Sec. 338.001. DEFINITION. Defines "monument or memorial" for purposes of this chapter.

Sec. 338.002. REMOVAL, RELOCATION, OR ALTERATION. Provides that a monument or memorial that has been located on municipal or county property:

(1) for at least 25 years may 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; or

(2) for less than 25 years may 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.

Sec. 338.003. ADDITIONAL MONUMENT OR MEMORIAL. Authorizes 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.

Sec. 338.004. COMPLAINT; EQUITABLE RELIEF; CIVIL PENALTY. (a) Authorizes a resident of a municipality or county, as applicable, to file a complaint with the attorney general if the resident asserts facts supporting an allegation that the municipality or county has violated Section 338.002. 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.

(b) Authorizes the attorney general, if the attorney general determines that a complaint filed under Subsection (a) against a municipality or county is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in the county in which the suspected violation of Section 338.002 is alleged to have occurred to compel the municipality or county to comply with that section.

(c) Provides that a municipality or county that is found by a court as having intentionally violated Section 338.002 is subject to a civil penalty in an amount of:

(1) not less than \$1,000 and not more than \$1,500 for the first violation; and

(2) not less than \$25,000 and not more than \$25,500 for each subsequent violation.

(d) Provides that each day of a continuing violation of Section 338.002 constitutes a separate violation for purposes of a civil penalty under this section.

(e) Requires the court that hears an action brought under this section against a municipality or county to determine the amount of the civil penalty.

(f) Requires a civil penalty collected under this section to be deposited to the credit of the general revenue fund.

(g) Provides that sovereign immunity of this state and governmental immunity of a county or municipality to suit is waived and abolished to the extent of liability created by this section.

SECTION 5. Effective date: upon passage or September 1, 2019.