

By: Creighton, et al.

S.B. No. 1416

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the removal, relocation, alteration, or construction of
3 certain monuments, memorials, or designations located on public
4 property; authorizing a civil penalty.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section [442.015\(b\)](#), Government Code, is amended
7 to read as follows:

8 (b) The commission may use distributions from the Texas
9 preservation trust fund account to provide financial assistance to
10 public or private entities for the acquisition, survey,
11 restoration, or preservation, or for planning and educational
12 activities leading to the preservation, of historic property in the
13 state that is listed in the National Register of Historic Places or
14 designated as a State Archeological Landmark or Recorded Texas
15 Historic Landmark, or that the commission determines is eligible
16 for such listing or designation or for the construction of a
17 monument or memorial described by Section [2166.5011\(c\)](#) or by
18 Section 338.003, Local Government Code. The financial assistance
19 may be in the amount and form and according to the terms that the
20 commission by rule determines. The commission shall give priority
21 to property the commission determines to be endangered by
22 demolition, neglect, underuse, looting, vandalism, or other threat
23 to the property. Gifts and grants deposited to the credit of the
24 account specifically for any eligible projects may be used only for

1 the type of projects specified. If such a specification is not
2 made, the gift or grant shall be unencumbered and accrue to the
3 benefit of the Texas preservation trust fund account. If such a
4 specification is made, the entire amount of the gift or grant may be
5 used during any period for the project or type of project specified.

6 SECTION 2. Section 443.0081, Government Code, is reenacted
7 and amended to read as follows:

8 Sec. 443.0081. HISTORICAL REPRESENTATION ADVISORY
9 COMMITTEE. (a) To ensure that the diverse history of Texas is
10 accurately represented in the Capitol Complex, the historical
11 representation advisory committee shall provide advice and
12 guidance to the board on the addition and removal of monuments in
13 [~~to~~] the Capitol Complex.

14 (b) The advisory committee consists of the following 12
15 members:

- 16 (1) four members appointed by the governor;
- 17 (2) four members appointed by the lieutenant governor;
- 18 and
- 19 (3) four members appointed by the speaker of the house
20 of representatives.

21 (c) In making appointments under this section, the
22 governor, the lieutenant governor, and the speaker of the house of
23 representatives shall attempt to include African American Texans,
24 Hispanic American Texans, Native American Texans, female Texans,
25 and Texans exemplifying rural heritage.

26 (d) The governor shall designate the presiding officer of
27 the committee from among the members of the committee. The

1 presiding officer serves a term of two years.

2 (e) A member of the advisory committee serves at the
3 pleasure of the appointing officer and serves without compensation
4 or reimbursement of expenses.

5 (f) The advisory committee shall conduct meetings the
6 committee considers necessary to provide advice and guidance under
7 this section. The board shall provide necessary administrative
8 support to the advisory committee.

9 (g) Subject to the approval of the board, the advisory
10 committee shall develop its own bylaws under which it shall
11 operate.

12 (h) Chapter 2110 does not apply to the advisory committee.

13 (i) The advisory committee is subject to the open meetings
14 law, Chapter 551.

15 (j) Not later than December 1, 2022, the [The] advisory
16 committee shall prepare and submit a report to the governor, board,
17 and legislature on the historical significance and relevance to the
18 history of this state of each monument in the Capitol Complex [is
19 subject to Chapter 325 (Texas Sunset Act). Unless continued in
20 existence as provided by that chapter, the advisory committee is
21 abolished September 1, 2007].

22 (k) The advisory committee shall:

23 (1) collect information relating to each proposed
24 monument to the Capitol Complex; and

25 (2) in cooperation with the chair of the history
26 department at Prairie View A&M University, at The University of
27 Texas at Austin, or at any other land grant university in the state,

1 as determined by the committee, ensure the:

2 (A) historical accuracy of any proposed
3 monument; and

4 (B) equitable representation of all Texans,
5 including African slaves, African Americans, Hispanic Americans,
6 Native Americans, women in Texas history, and Texans exemplifying
7 military service and rural heritage in additional monuments to the
8 Capitol Complex.

9 (1) In this section, "monument" has the meaning assigned by
10 Section 443.0152 [~~443.015, as added by Chapter 1141, Acts of the~~
11 ~~75th Legislature, Regular Session, 1997~~].

12 (m) The advisory committee is abolished and this section
13 expires January 1, 2023.

14 SECTION 3. Section 2166.5011, Government Code, is amended
15 to read as follows:

16 Sec. 2166.5011. REMOVAL, RELOCATION, [~~OR~~] ALTERATION, OR
17 CONSTRUCTION OF A MONUMENT OR MEMORIAL. (a) In this section,
18 "monument or memorial" means a permanent monument, memorial, or
19 other designation, including a statue, portrait, plaque, seal,
20 symbol, cenotaph, building name, bridge name, park name, area name,
21 or street name, that:

22 (1) is located on state owned or leased property; and

23 (2) honors an event or person of historic significance
24 [~~a citizen of this state for military or war-related service~~].

25 (b) Notwithstanding any other provision of this code and
26 except as provided by Section 2166.5012, a monument or memorial
27 that has been located on state owned or leased property:

1 (1) for at least 25 years may be removed, relocated, or
2 altered only by approval of a concurrent resolution authorizing the
3 removal, relocation, or alteration, including alteration to
4 maintain historical accuracy, by a two-thirds vote of the members
5 of each house of the legislature; or

6 (2) for less than 25 years may be removed, relocated,
7 or altered, including alteration to maintain historical accuracy,
8 only by formal action of the governing body of or the single state
9 officer who governs the state agency that erected the monument or
10 memorial[-

11 ~~[(1) by the legislature,~~

12 ~~[(2) by the Texas Historical Commission,~~

13 ~~[(3) by the State Preservation Board; or~~

14 ~~[(4) as provided by Subsection (c)].~~

15 (c) An additional [A] monument or memorial may be added
16 [removed, relocated, or altered in a manner otherwise provided by
17 this code as necessary to accommodate construction, repair, or
18 improvements] to the [monument or memorial or to the] surrounding
19 state owned or leased property on which a [the] monument or memorial
20 is located to complement or contrast with the monument or memorial.
21 ~~[Any monument or memorial that is permanently removed under this~~
22 ~~subsection must be relocated to a prominent location.]~~

23 (d) Notwithstanding Section 2166.003, this section applies
24 to a monument or memorial on property of an institution of higher
25 education, as defined by Section 61.003, Education Code.

26 SECTION 4. Subchapter K, Chapter 2166, Government Code, is
27 amended by adding Sections 2166.5012, 2166.5013, and 2166.5015 to

1 read as follows:

2 Sec. 2166.5012. CERTAIN DESIGNATIONS BY INSTITUTIONS OF
3 HIGHER EDUCATION. (a) In this section:

4 (1) "Designation" includes a designation of a
5 portrait, plaque, seal, symbol, building name, bridge name, park
6 name, area name, or street name.

7 (2) "Institution of higher education" has the meaning
8 assigned by Section 61.003, Education Code.

9 (b) Notwithstanding Section 2166.003, an institution of
10 higher education may rename or alter a designation only if:

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

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

17 Sec. 2166.5013. ALAMO CENOTAPH. (a) In this section,
18 "Alamo Cenotaph" means the memorial to the Alamo defenders located
19 in the Alamo complex.

20 (b) Notwithstanding any other law, no entity may alter,
21 remove, or relocate the Alamo Cenotaph from the location where the
22 cenotaph was first placed following its completion.

23 Sec. 2166.5015. COMPLAINT; EQUITABLE RELIEF; CIVIL
24 PENALTY. (a) A resident of this state may file a complaint with
25 the attorney general if the resident asserts facts supporting an
26 allegation that an entity has violated Section 2166.5011(b) or
27 2166.5012. The resident must include a sworn statement with the

1 complaint stating that to the best of the resident's knowledge all
2 of the facts asserted in the complaint are true and correct.

3 (b) If the attorney general determines that a complaint
4 filed under Subsection (a) against an entity is valid, the attorney
5 general may file a petition for a writ of mandamus or apply for
6 other appropriate equitable relief in a district court in Travis
7 County to compel the entity that is suspected of violating Section
8 2166.5011(b) or 2166.5012 to comply with those sections.

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

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

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

16 (d) Each day of a continuing violation of Section
17 2166.5011(b) or 2166.5012 constitutes a separate violation for
18 purposes of a civil penalty under this section.

19 (e) The court that hears an action brought under this
20 section against an entity shall determine the amount of the civil
21 penalty.

22 (f) A civil penalty collected under this section shall be
23 deposited to the credit of the general revenue fund.

24 (g) Sovereign immunity of this state to suit is waived and
25 abolished to the extent of liability created by this section.

26 SECTION 5. Subtitle C, Title 10, Local Government Code, is
27 amended by adding Chapter 338 to read as follows:

1 CHAPTER 338. MONUMENTS AND MEMORIALS

2 Sec. 338.001. DEFINITION. In this chapter, "monument or
3 memorial" means a permanent monument, memorial, or other
4 designation, including a statue, portrait, plaque, seal, symbol,
5 cenotaph, building name, bridge name, park name, area name, or
6 street name, that honors an event or person of historic
7 significance.

8 Sec. 338.002. REMOVAL, RELOCATION, OR ALTERATION. A
9 monument or memorial that has been located on municipal or county
10 property:

11 (1) for at least 25 years may be removed, relocated, or
12 altered, including alteration to maintain historical accuracy,
13 only by supermajority vote by the governing body of the
14 municipality or the commissioners court of the county, as
15 applicable; or

16 (2) for less than 25 years may be removed, relocated,
17 or altered, including alteration to maintain historical accuracy,
18 only by the governing body of the municipality or the commissioners
19 court of the county, as applicable.

20 Sec. 338.003. ADDITIONAL MONUMENT OR MEMORIAL. An
21 additional monument or memorial may be added to the surrounding
22 municipal or county property on which a monument or memorial is
23 located to complement or contrast with the monument or memorial.

24 Sec. 338.004. COMPLAINT; EQUITABLE RELIEF; CIVIL PENALTY.

25 (a) A resident of a municipality or county, as applicable, may
26 file a complaint with the attorney general if the resident asserts
27 facts supporting an allegation that the municipality or county has

1 violated Section 338.002. The resident must include a sworn
2 statement with the complaint stating that to the best of the
3 resident's knowledge all of the facts asserted in the complaint are
4 true and correct.

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

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

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

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

19 (d) Each day of a continuing violation of Section 338.002
20 constitutes a separate violation for purposes of a civil penalty
21 under this section.

22 (e) The court that hears an action brought under this
23 section against a municipality or county shall determine the amount
24 of the civil penalty.

25 (f) A civil penalty collected under this section shall be
26 deposited to the credit of the general revenue fund.

27 (g) Sovereign immunity of this state and governmental

1 immunity of a county or municipality to suit is waived and abolished
2 to the extent of liability created by this section.

3 SECTION 6. Not later than January 1, 2022, the governor, the
4 lieutenant governor, and the speaker of the house of
5 representatives shall make the appointments to the historical
6 representation advisory committee under Section [443.0081](#),
7 Government Code, as reenacted and amended by this Act.

8 SECTION 7. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section [39](#), Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2021.