

By: Cyrier

H.B. No. 4538

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the removal, relocation, alteration, or construction of  
3 certain monuments or memorials located on municipal or county  
4 property; providing civil penalties.

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 338.003, Local Government  
18 Code. The financial assistance may be in the amount and form and  
19 according to the terms that the commission by rule determines. The  
20 commission shall give priority to property the commission  
21 determines to be endangered by demolition, neglect, underuse,  
22 looting, vandalism, or other threat to the property. Gifts and  
23 grants deposited to the credit of the account specifically for any  
24 eligible projects may be used only for the type of projects

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

6 SECTION 2. Subtitle C, Title 10, Local Government Code, is  
7 amended by adding Chapter 338 to read as follows:

8 CHAPTER 338. MONUMENTS AND MEMORIALS

9 Sec. 338.001. DEFINITION. In this chapter, "monument or  
10 memorial" means a permanent monument, memorial, or other  
11 designation, including a statue, portrait, plaque, seal, symbol,  
12 building name, bridge name, park name, area name, or street name,  
13 that honors an event or person of historical significance.

14 Sec. 338.002. REMOVAL, RELOCATION, OR ALTERATION. A  
15 monument or memorial that is located on municipal or county  
16 property:

17 (1) for at least 40 years may be removed, relocated, or  
18 altered, including alteration to maintain historical accuracy,  
19 only by approval of a majority of the voters of the municipality or  
20 county, as applicable, voting at an election held for that purpose;  
21 or

22 (2) for less than 40 years may be removed, relocated,  
23 or altered, including alteration to maintain historical accuracy,  
24 only by the governing body of the municipality or the commissioners  
25 court of the county, as applicable.

26 Sec. 338.003. ADDITIONAL MONUMENT OR MEMORIAL. An  
27 additional monument or memorial may be added to the surrounding

1 municipal or county property on which a monument or memorial is  
2 located to complement or contrast with the monument or memorial.

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

4 (a) A resident of a municipality or county, as applicable, may file  
5 a complaint with the attorney general if the resident asserts facts  
6 supporting an allegation that the municipality or county has  
7 violated Section 338.002. The resident must include a sworn  
8 statement with the complaint stating that to the best of the  
9 resident's knowledge all of the facts asserted in the complaint are  
10 true and correct.

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

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

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

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

25 (d) Each day of a continuing violation of Section 338.002  
26 constitutes a separate violation for purposes of a civil penalty  
27 under this section.

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

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

6       (g) Sovereign immunity of this state and governmental  
7 immunity of a county or municipality to suit is waived and abolished  
8 to the extent of liability created by this section.

9       SECTION 3. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect September 1, 2021.