

By: Creighton, et al.
(White, Toth, Hefner, et al.)

S.B. No. 1663

Substitute the following for S.B. No. 1663:

By: Cyrier

C.S.S.B. No. 1663

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the removal, relocation, alteration, or construction of
3 certain monuments or memorials located on public property;
4 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 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 [2166.5011](#), Government Code, is amended
7 to read as follows:

8 Sec. 2166.5011. REMOVAL, RELOCATION, ~~[OR]~~ ALTERATION, OR
9 CONSTRUCTION OF A MONUMENT OR MEMORIAL. (a) In this section,
10 "monument or memorial" means a permanent monument, memorial, or
11 other designation, including a statue, portrait, plaque, seal,
12 symbol, building name, bridge name, park name, area name, or street
13 name, that:

14 (1) is located on state property; and

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

17 (b) Notwithstanding any other provision of this code, a
18 monument or memorial that is located on state property:

19 (1) for at least 40 years may not be removed,
20 relocated, or altered;

21 (2) for at least 20 years but less than 40 years may be
22 removed, relocated, or altered only by approval of a concurrent
23 resolution authorizing the removal, relocation, or alteration,
24 including alteration to maintain historical accuracy, by a
25 two-thirds vote of the members of each house of the legislature; or

26 (3) for less than 20 years may be removed, relocated,
27 or altered, including alteration to maintain historical accuracy,

1 only[+]

2 [~~(1)~~] by the legislature[+]

3 [~~(2) by the Texas Historical Commission;~~

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

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

6 (c) An additional [A] monument or memorial may be added
7 [removed, relocated, or altered in a manner otherwise provided by
8 this code as necessary to accommodate construction, repair, or
9 improvements] to the [monument or memorial or to the] surrounding
10 state property on which a [the] monument or memorial is located to
11 complement or contrast with the monument or memorial. [Any monument
12 or memorial that is permanently removed under this subsection must
13 be relocated to a prominent location.]

14 SECTION 3. Subchapter K, Chapter 2166, Government Code, is
15 amended by adding Section 2166.5015 to read as follows:

16 Sec. 2166.5015. COMPLAINT; EQUITABLE RELIEF; CIVIL
17 PENALTY. (a) A resident of this state may file a complaint with the
18 attorney general if the resident asserts facts supporting an
19 allegation that an entity has violated Section 2166.5011(b). The
20 resident must include a sworn statement with the complaint stating
21 that to the best of the resident's knowledge all of the facts
22 asserted in the complaint are true and correct.

23 (b) If the attorney general determines that a complaint
24 filed under Subsection (a) against an entity is valid, the attorney
25 general may file a petition for a writ of mandamus or apply for
26 other appropriate equitable relief in a district court in Travis
27 County to compel the entity that is suspected of violating Section

1 2166.5011(b) to comply with that subsection.

2 (c) An entity that is found by a court as having
3 intentionally violated Section 2166.5011(b) is subject to a civil
4 penalty in an amount of:

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

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

9 (d) Each day of a continuing violation of Section
10 2166.5011(b) constitutes a separate violation for purposes of a
11 civil penalty under this section.

12 (e) The court that hears an action brought under this
13 section against an entity shall determine the amount of the civil
14 penalty.

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

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

19 SECTION 4. Subtitle C, Title 10, Local Government Code, is
20 amended by adding Chapter 338 to read as follows:

21 CHAPTER 338. MONUMENTS AND MEMORIALS

22 Sec. 338.001. DEFINITION. In this chapter, "monument or
23 memorial" means a permanent monument, memorial, or other
24 designation, including a statue, portrait, plaque, seal, symbol,
25 building name, bridge name, park name, area name, or street name,
26 that honors an event or person of historic significance.

27 Sec. 338.002. REMOVAL, RELOCATION, OR ALTERATION. A

1 monument or memorial that is located on municipal or county
2 property:

3 (1) for at least 40 years may not be removed,
4 relocated, or altered;

5 (2) for at least 20 years but less than 40 years may be
6 removed, relocated, or altered, including alteration to maintain
7 historical accuracy, only by approval of a majority of the voters of
8 the municipality or county, as applicable, voting at an election
9 held for that purpose; or

10 (3) for less than 20 years may be removed, relocated,
11 or altered, including alteration to maintain historical accuracy,
12 only by the governing body of the municipality or the commissioners
13 court of the county, as applicable.

14 Sec. 338.003. ADDITIONAL MONUMENT OR MEMORIAL. An
15 additional monument or memorial may be added to the surrounding
16 municipal or county property on which a monument or memorial is
17 located to complement or contrast with the monument or memorial.

18 Sec. 338.004. COMPLAINT; EQUITABLE RELIEF; CIVIL PENALTY.
19 (a) A resident of a municipality or county, as applicable, may file
20 a complaint with the attorney general if the resident asserts facts
21 supporting an allegation that the municipality or county has
22 violated Section 338.002. The resident must include a sworn
23 statement with the complaint stating that to the best of the
24 resident's knowledge all of the facts asserted in the complaint are
25 true and correct.

26 (b) If the attorney general determines that a complaint
27 filed under Subsection (a) against a municipality or county is

1 valid, the attorney general may file a petition for a writ of
2 mandamus or apply for other appropriate equitable relief in a
3 district court in Travis County or in the county in which the
4 suspected violation of Section 338.002 is alleged to have occurred
5 to compel the municipality or county to comply with that section.

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

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

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

13 (d) Each day of a continuing violation of Section 338.002
14 constitutes a separate violation for purposes of a civil penalty
15 under this section.

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

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

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

24 SECTION 5. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2019.