

BILL ANALYSIS

C.S.H.B. 2713
By: Hefner
Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that there should be a uniform manner by which public monuments and memorials may be removed, relocated, or altered. C.S.H.B. 2713 seeks to provide for this uniformity on the state level and on a local level by revising restrictions on the removal, relocation, or alteration of monuments or memorials located on state property and setting out new restrictions applicable to monuments or memorials located on municipal or county property. The bill also reactivates the historical representation advisory committee to provide advice and guidance on the addition and removal of monuments in the Capitol Complex.

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

ANALYSIS

C.S.H.B. 2713 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 (SPB);
- 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 for the purpose of accommodating construction, repair, or improvements to be relocated to a prominent location.

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

- authorize a monument or memorial that has been located on state owned or leased property for at least 25 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 has been located on state owned or leased property for less than 25 years to be removed, relocated, or altered, including alteration to maintain historical accuracy, 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; and

- authorize an additional monument or memorial to be added to the surrounding state owned or leased property on which a monument or memorial is located to complement or contrast with the monument or memorial.

The bill redefines "monument or memorial" as any permanent monument, memorial, or other designation that is located on state owned or leased property and that honors an event or person of historic significance. The bill adds a cenotaph, bridge name, park name, or area name among the items that are expressly included.

C.S.H.B. 2713 makes provisions relating to the removal, relocation, alteration, or construction of a monument or memorial located on state owned or leased property applicable to a monument or memorial on property of a public institution of higher education. The bill authorizes a public institution of higher education to rename or alter a designation, including a designation of a portrait, plaque, seal, symbol, building name, bridge name, park name, area name, or street name, only under the following conditions:

- the institution's governing board has previously adopted rules providing for the naming, renaming, or altering of a designation in recognition of philanthropic gifts to the institution; and
- the renaming or alteration is approved by the governing board.

C.S.H.B. 2713 amends the Local Government Code to set out provisions that do the following:

- authorize a monument or memorial that has been located on municipal or county property for at least 25 years to be removed, relocated, or altered, including alteration to maintain historical accuracy, only by supermajority vote by the governing body of the municipality or the commissioners court of the county, as applicable;
- authorize a monument or memorial that has been located on municipal or county property for less than 25 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. 2713 amends the Government Code and Local Government Code to authorize a resident 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 or the renaming or alteration of a designation by a public institution of higher education. This authorization applies as follows:

- a complaint regarding state owned or leased property or a public institution of higher education may be filed by any Texas resident;
- a complaint regarding municipal property may be filed by a resident of the municipality; and
- a complaint regarding county property may be filed by a resident of the county.

C.S.H.B. 2713 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. If the attorney general determines that the complaint is valid, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in an applicable district court, as specified by the bill, 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 the following amounts:

- an amount of not less than \$1,000 and not more than \$1,500 for the first violation; and
- an amount of 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. 2713 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 the surrounding state, municipal, or county property on which a monument or memorial is located to complement or contrast with the monument or memorial as provided by the bill.

C.S.H.B. 2713 prohibits an entity from altering, removing, or relocating the Alamo Cenotaph from the location where the cenotaph was first placed following its completion and defines "Alamo Cenotaph" as the memorial to the Alamo defenders located in the Alamo complex.

C.S.H.B. 2713 reenacts and amends provisions relating to the historical representation advisory committee to reactivate that committee and to change the committee's duty from providing guidance to SPB on the addition of monuments to the Capitol Complex to providing advice and guidance to SPB on the addition and removal of monuments in the Capitol Complex. The bill requires the committee, not later than December 1, 2022, to prepare and submit a report to the governor, SPB, and legislature on the historical significance and relevance to Texas history of each monument in the Capitol Complex. The bill requires the governor, the lieutenant governor, and the speaker of the house of representatives to make the appointments to the committee not later than January 1, 2022. The committee is abolished and the provisions relating to the committee expire January 1, 2023.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2713 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 differs from the original with respect to the removal, relocation, alteration, or construction of a monument or memorial as follows:

- the substitute includes a cenotaph in the applicable definitions of "monument or memorial" whereas the original does not include a cenotaph;
- the substitute does not include the original's prohibitions against the removal, relocation, or alteration of a monument or memorial that is located on state, municipal, or county property for at least 40 years;
- in the provisions regarding a monument or memorial located on state property:
 - the substitute includes a specification not in the original that the provisions apply to property that is owned or leased by the state;
 - the substitute changes from at least 20 years but less than 40 years to at least 25 years the amount of time that a monument or memorial must be located on state property in order for it to be removed, relocated, or altered only by approval of a concurrent resolution by a two-thirds vote; and
 - the substitute replaces the original's authorization for a monument or memorial that is located on state property for less than 20 years to be removed, relocated, or altered only by the legislature with an authorization for a monument or memorial that has been located on state property for less than 25 years to 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;
- in the provisions regarding a monument or memorial located on municipal or county property:
 - the substitute does not include the original's authorization for 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 only by voter approval;
 - the substitute includes instead an authorization for a monument or memorial that has been located on municipal or county property for at least 25 years to be removed, relocated, or altered only by supermajority vote by the governing body of the municipality or the commissioners court of the county, as applicable; and
 - the substitute changes from less than 20 years to less than 25 years the amount of time a monument or memorial must be located on municipal or county property in order for it to be removed, relocated, or altered only by the governing body of the municipality or the commissioners court of the county, as applicable; and
- the substitute specifies that an additional monument may be added to surrounding property to complement or contrast with a monument or memorial, whereas the original specifies that an additional monument may be constructed on surrounding property for that purpose.

The substitute includes provisions absent from the original that do the following:

- make provisions relating to the removal, relocation, alteration, or construction of a monument or memorial on state owned or leased property applicable to a monument or memorial on property of a public institution of higher education; and
- authorize a public institution of higher education to rename or alter a designation only under specified conditions.

The substitute includes a violation of its provisions relating to the renaming or alteration of a designation by a public institution of higher education as a violation for which a Texas resident may file a complaint with the attorney general under the bill's complaint, equitable relief, and civil penalty provisions.

The substitute includes a provision that did not appear in the original prohibiting an entity from altering, removing, or relocating the Alamo Cenotaph from the location where the cenotaph was first placed following its completion.

The substitute includes provisions relating to the historical representation advisory committee, whereas the original did not include these provisions.