

State of Arkansas As Engrossed: S3/29/21 H4/13/21

93rd General Assembly

A Bill

Regular Session, 2021

SENATE BILL 553

By: Senators M. Johnson, B. Ballinger, Beckham, Caldwell, A. Clark, J. English, T. Garner, Gilmore, K. Hammer, Hill, B. Johnson, Rapert, G. Stubblefield, D. Sullivan, D. Wallace
By: Representatives Payton, Beck, Cozart, Lowery, Ray

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS STATE CAPITOL AND
HISTORICAL MONUMENT PROTECTION ACT; *TO DECLARE AN
EMERGENCY; AND FOR OTHER PURPOSES.*

Subtitle

*TO CREATE THE ARKANSAS STATE CAPITOL AND
HISTORICAL MONUMENT PROTECTION ACT; AND
TO DECLARE AN EMERGENCY.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 22, Chapter 3, is amended to add an
additional subchapter to read as follows:

Subchapter 21 – Arkansas State Capitol and Historical Monument Protection Act

22-3-2101. Title.

This subchapter shall be known and may be cited as the "Arkansas State
Capitol and Historical Monument Protection Act".

22-3-2102. Definitions.

As used in this subchapter:

(1)(A) "Historical monument" means a statue, memorial,
gravestone plate, plaque, or historic flag display that is located:

(i) On public property and was installed, erected for, or
named or dedicated in honor of a historical person, historical event, public



service organization, firefighter, police officer, military organization, or military unit, including without limitation:

(a) The French and Indian War;

(b) The American Revolution;

(c) The War of 1812;

(d) The Mexican-American War;

(e) The American Civil War;

(f) The Spanish-American War;

(g) The Mexican Border War;

(h) World War I;

(i) World War II;

(j) The Korean conflict;

(k) The Vietnam War;

(l) Operation Urgent Fury;

(m) Operation El Dorado Canyon;

(n) Operation Just Cause;

(o) The Gulf War;

(p) Operation Enduring Freedom; and

(q) Operation Iraqi Freedom;

(ii) On public property and has been listed on the National Register of Historic Places; or

(iii) In a veterans' cemetery.

(B) "Historical monument" does not include:

(i) A Temporary exhibit;

(ii) A Temporary structure;

(iii) A street sign; or

(iv) Public property of the State Highway

Commission;

(2) "Memorial" means an identifiable place that is set aside for the purpose of preserving the memory of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit;

(3) "Person" means an individual or entity;

(4) "Public property" means all real or personal property owned or leased by the state, a county, a municipality, or any other entity or subdivision of the state, a county, or a municipal entity that is created by

1 an act of the General Assembly to perform a public function; and

2 (5) "State Capitol" means the land, parking areas, and streets
3 surrounding the State Capitol Building, the Capitol Hill Apartments building,
4 the Grounds Operations shop, and other land that is maintained by the
5 Secretary of State.

6
7 22-3-2103. Preservation of State Capitol.

8 (a) The State Capitol shall not be vandalized, damaged, destroyed, or
9 otherwise disturbed.

10 (b) Subsection (a) of this section does not prohibit a governmental
11 entity having responsibility for maintaining the State Capitol from taking
12 proper and appropriate measures, and exercising proper and appropriate means,
13 for the protection, preservation, care, repair, or restoration of the State
14 Capitol.

15 (c) Subsection (a) of this section does not prohibit a public utility
16 from performing work on the State Capitol if the public utility:

17 (1) Exercises proper and appropriate means for the protection,
18 preservation, care, repair, or restoration of the State Capitol; and

19 (2) Coordinates the work with the Secretary of State or the
20 Capitol Arts and Grounds Commission.

21
22 22-3-2104. Preservation of historical monuments.

23 (a)(1) A historical monument shall not be relocated, vandalized,
24 damaged, destroyed, removed, altered, renamed, rededicated, or otherwise
25 disturbed.

26 (2) Subdivision (a)(1) of this section does not prohibit a
27 governmental entity having responsibility for maintaining a historical
28 monument from:

29 (A) Taking proper and appropriate measures, and exercising
30 proper and appropriate means, for the protection, preservation, care, repair,
31 or restoration of the historical monument; and

32 (B) Temporarily removing or relocating the historical
33 monument to repair public property or any public infrastructure surrounding
34 the historical monument if the governmental entity:

35 (i) Removes or relocates the historical monument for
36 less than sixty (60) days; and

1 (ii) Ensures the protection of the historical
2 monument while the historical monument is removed or relocated.

3 (3) Subdivision (a)(1) of this section does not prohibit a local
4 government entity from removing, storing, stabilizing, altering, or otherwise
5 displacing a historical monument to install, relocate, repair, or alter
6 public infrastructure if:

7 (A) The local government entity exercises proper and
8 appropriate means for the protection, preservation, care, repair, or
9 restoration of the historical monument;

10 (B) The historical monument is removed or relocated for
11 less than sixty (60) days;

12 (C) A waiver is obtained from the Arkansas History
13 Commission to remove or relocate the historical monument for a period of time
14 greater than sixty (60) days; and

15 (D) The public utility ensures the protection of the
16 historical monument while the historical monument is removed or relocated.

17 (4) A person shall not install, erect, name, or dedicate a new
18 historical monument that impedes the use of a public right-of-way or utility
19 easement.

20 (5) Subdivision (a)(1) of this section does not apply to the
21 replacement or repair of a frayed, soiled, or damaged flag that is part of a
22 historic flag display if the frayed, soiled, or damaged flag is replaced with
23 a similar flag.

24 (b)(1) An entity exercising control of public property that is itself
25 a historical monument or on which a historical monument is situated may
26 petition the Arkansas History Commission for a waiver from the requirements
27 of subdivision (a)(1) of this section.

28 (2) A petition for a waiver authorized by subdivision (b)(1) of
29 this section shall:

30 (A) Be in writing; and

31 (B) State the reason the waiver is necessary.

32 (3) The Arkansas History Commission may:

33 (A) Grant a petition for a waiver by a majority vote of
34 those present and voting at a regularly scheduled Arkansas History Commission
35 meeting; and

36 (B) Include reasonable conditions and instructions to

1 ensure that the historical monument is preserved to the greatest extent
2 possible.

3 (c) Subsection (b) of this section does not apply to the Capitol Arts
4 and Grounds Commission or the office of the Secretary of State.

5 (d) A governmental entity may request an advisory opinion from the
6 Arkansas History Commission of whether a statue, memorial, gravestone plate,
7 plaque, or historic flag display qualifies as a historical monument under
8 this subchapter.

9 (e) A governmental entity shall request a waiver from the Arkansas
10 History Commission for a historical monument that previously has been removed
11 but is still in the possession of a governmental entity to determine the
12 disposition of the historical monument under subdivision (f)(1) of this
13 section.

14 (f)(1) If a waiver is granted by the Arkansas History Commission for
15 the removal of a historical monument, the waiver shall include directions for
16 the disposition of the historical monument and may include without limitation
17 the:

18 (A) Return of the historical monument to the donor of the
19 historical monument or the donor's heirs or assigns;

20 (B) Return of the historical monument to an organization
21 that donated the historical monument or the organization's successor or
22 assigns;

23 (C) Donation of the historical monument to a public
24 entity; or

25 (D) Donation or public sale of the historical monument to
26 a private entity.

27 (2) If a waiver is granted to remove a historical monument or a
28 waiver is granted to allow the disposition of a historical monument that has
29 been removed, title to the removed historical monument shall be transferred
30 to the entity receiving the historical monument under subdivision (f)(1) of
31 this section.

32
33 22-3-2105. Applicability.

34 (a) A petition for a waiver may be authorized under § 22-3-2104(b) if
35 the application of this subchapter interferes with the construction,
36 maintenance, or operation of a public facility owned or managed by the

1 Department of Parks, Heritage, and Tourism.

2 (b) A court of competent jurisdiction may enjoin any violation of or
3 noncompliance with the provisions of this subchapter upon petition by a
4 resident of the State of Arkansas or by the Arkansas History Commission.

5 (c)(1) A historical monument in existence on the effective date of
6 this act is considered a historical monument for the purposes of this
7 subchapter.

8 (2) A historical monument not currently displayed by a public
9 entity is considered a historical monument for the purposes of this
10 subchapter.

11 (d) A governmental entity may request that the commission recognize a
12 statue, memorial, gravestone plate, plaque, or historic flag display erected
13 and dedicated after the effective date of this act as a historical monument
14 by an application process established by the rules of the commission.

15 (e) The commission shall promulgate rules under the Arkansas
16 Administrative Procedure Act, § 25-15-201 et seq., to:

17 (1) Establish a process for the application for a waiver;

18 (2) Create a process for the approval of a temporary waiver on
19 an emergency basis;

20 (3) Establish guidelines regarding what will be designated as a
21 historical monument;

22 (4) Create an application process for registering historical
23 monuments erected after the effective date of this section;

24 (5) Establish guidelines for the disposition of historical
25 monuments if a waiver is granted to remove a historical monument; and

26 (6) Otherwise effectuate the purposes of this subchapter.

27
28 22-3-2106. Penalty.

29 A person who knowingly violates this subchapter upon conviction is
30 guilty of a:

31 (1) Class A misdemeanor if:

32 (A) The value of the property is more than five hundred
33 dollars (\$500); and

34 (B) The damage or repair cost to the historical monument
35 is more than one hundred dollars (\$100); and

36 (2) Class D felony if the person has been previously convicted

1 of a Class A misdemeanor under this subchapter and:

2 (A) The value of the property is more than one thousand
3 dollars (\$1,000); or

4 (B) The damage or repair cost to the historical monument
5 is more than one thousand dollars (\$1,000).

6
7 SECTION 2. DO NOT CODIFY. Rules implementing this act.

8 (a) The Arkansas History Commission shall promulgate rules necessary
9 to implement this act.

10 (b)(1) When adopting the initial rules to implement this act, the
11 final rules shall be filed with the Secretary of State for adoption under §
12 25-15-204(f):

13 (A) On or before January 1, 2022; or

14 (B) If approval under § 10-3-309 has not occurred by
15 January 1, 2022, as soon as practicable after approval under § 10-3-309.

16 (2) The Arkansas History Commission shall file the proposed
17 rules with the Legislative Council under § 10-3-309(c) sufficiently in
18 advance of January 1, 2022, so that the Legislative Council may consider the
19 rule for approval before January 1, 2022.

20
21 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
22 General Assembly of the State of Arkansas that the State Capitol, monuments,
23 and veterans' cemeteries suffered extensive vandalism during the past year;
24 that the State Capitol and other historical monuments require additional
25 protection; that the historical monuments have an irreplaceable value to the
26 people of Arkansas who wish to preserve these venerated treasures; and that
27 this act is immediately necessary because there is a continuing and imminent
28 threat to historical monuments, and the preservation of these historical
29 monuments protects the public peace. Therefore, an emergency is declared to
30 exist, and this act being immediately necessary for the preservation of the
31 public peace, health, and safety shall become effective on:

32 (1) The date of its approval by the Governor;

33 (2) If the bill is neither approved nor vetoed by the Governor,
34 the expiration of the period of time during which the Governor may veto the
35 bill; or

36 (3) If the bill is vetoed by the Governor and the veto is

overridden, the date the last house overrides the veto.

/s/M. Johnson