

BILL ANALYSIS

C.S.S.B. 1663
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Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the recent increase in attempted removals of Texas historical monuments and memorials. C.S.S.B. 1663 seeks to address these concerns by setting out provisions relating to the removal, relocation, alteration, or construction of certain monuments or memorials located on public property and providing for a civil penalty.

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 rulemaking authority is expressly granted to the Texas Historical Commission in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 1663 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;
- 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 as such to be relocated to a prominent location.

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

- prohibit a monument or memorial that is located on state property for at least 40 years from being removed, relocated, or altered;
- authorize a monument or memorial that is located on state property for at least 20 years but less than 40 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 is located on state property for less than 20 years to be removed, relocated, or altered, including alteration to maintain historical accuracy, only by the legislature;

- authorize an additional monument or memorial to be added to the surrounding state property on which a monument or memorial is located to complement or contrast with the monument or memorial; and
- expand the items to be honored in the applicable definition of "monument or memorial" from a citizen of Texas for military or war-related service to an event or person of historic significance.

C.S.S.B. 1663 amends the Local Government Code to set out provisions that do the following:

- prohibit a monument or memorial that is located on municipal or county property for at least 40 years from being removed, relocated, or altered;
- authorize 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, including alteration to maintain historical accuracy, only by approval of a majority of the voters of the municipality or county, as applicable, voting at an election held for that purpose;
- authorize a monument or memorial that is located on municipal or county property for less than 20 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.S.B. 1663 amends the Government Code and the Local Government Code to authorize a Texas resident, as applicable, 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. The bill 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. The bill authorizes the attorney general, if the attorney general determines that the complaint is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in an applicable district court 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 an amount of:

- not less than \$1,000 and not more than \$1,500 for the first violation; and
- 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.S.B. 1663 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 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.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1663 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute does not include the following provisions:

- provisions relating to the historical representation advisory committee;
- provisions establishing the senate interim committee on senate chamber art;
- provisions authorizing an institution of higher education to rename or alter a designation only under specified conditions; and
- provisions 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 differs with respect to provisions relating to the removal, relocation, or alteration of a monument or memorial located on state property in the following ways:

- the substitute does not include a provision applying such provisions to a monument or memorial on property of an institution of higher education;
- the substitute does not include a specification that a cenotaph is included as a monument or memorial and does not include the specification that the state property on which a monument or memorial is located is state owned or leased property;
- the substitute includes a provision prohibiting a monument or memorial that is located on state property for at least 40 years from being removed, relocated, or altered;
- the substitute changes from at least 25 years to at least 20 years but less than 40 years the time that a monument or memorial must be located on state property that triggers the authorization for the monument or memorial to be removed, relocated, or altered by an applicable process; and
- the substitute replaces the authorization for a monument or memorial that has been located on state 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 with an authorization for a monument or memorial that is located on state property for less than 20 years to be removed, relocated, or altered, including alteration to maintain historical accuracy, only by the legislature.

The substitute differs with respect to provisions relating to the removal, relocation, or alteration of a monument or memorial located on municipal or county property in the following ways:

- the substitute does not include a specification that a cenotaph is included as an applicable monument or memorial;
- the substitute includes a provision prohibiting a monument or memorial that is located on municipal or county property for at least 40 years from being removed, relocated, or altered;
- the substitute replaces the 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, 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, with an 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, including alteration to maintain historical accuracy, only by approval of a majority of the voters of the municipality or county, as applicable, voting at

an election held for that purpose; and

- the substitute changes from less than 25 years to less than 20 years the time that a monument or memorial must be located on municipal or county property that triggers the authorization for the monument or memorial 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.