

TN - SB2138
Historical Sites and Preservation –
As Enacted, Enacts the
"Tennessee Heritage Protection Act of 2016."
Amends TCA Title 4, Chapter 1, Part 4.

This bill replaces the Tennessee Heritage Protection Act of 2013 (present law) with the Tennessee Heritage Protection Act of 2016.

PROTECTED ARTICLES

Present law provides as follows, unless a waiver is granted by the Tennessee historical commission:

- (1) No statue, monument, memorial, nameplate, or plaque which has been erected for, or named or dedicated in honor of a military conflict that is identified in a list of conflicts in which the U.S. has participated and is located on public property, may be relocated, removed, altered, renamed, rededicated, or otherwise disturbed; and
- (2) No statue, monument, memorial, nameplate, plaque, historic flag display, school, street, bridge, building, park, preserve, or reserve which has been erected for, or named or dedicated in honor of, any historical military figure, historical military event, military organization, or military unit, and is located on public property, may be renamed or rededicated.

The prohibitions described in (1) and (2) do not apply to otherwise protected items, structures, or areas that are located on public property under the control of, or acquired by, the department of transportation which may interfere with the construction, maintenance, or operation of the public transportation system.

This bill instead prohibits the removal, renaming, relocation, alteration, rededication, or otherwise disturbing or alteration of any memorial regarding a "historic conflict," "historic entity," "historic event," "historic figure," or "historic organization" that is, or is located on, public property, unless the commission grants a waiver. Under this bill:

- (1) "Historic event" means any war, battle, or military conflict in which citizens of the United States or any state or territory of the United States have participated;
- (2) "Historic entity" means any entity recognized as having state, national, military, or historical significance;
- (3) "Historic event" means any event recognized as having state, national, military, or historical significance;
- (4) "Historic figure" means any individual who has been recognized as having served in any historic conflict, historic event, historic entity, public office, or in public service; and
- (5) "Historic organization" means any entity that has as one or more of its material missions, the recognition or preservation of any historic conflict, historic entity, historic event, or historic figure.

Present law defines "public property" to mean all property owned or leased by the state of Tennessee, any county, municipality, metropolitan government, or any other entity that is created by act of the general assembly to perform any public function. This bill instead

defines "public property" as all property owned, leased, rented, managed, or maintained by or under the authority of this state, any county, municipality, metropolitan government, or any other public entity that is created by act of the general assembly to perform any public function.

This bill defines "memorial" as:

- (1) Any public real property or park, preserve, or reserve located on public property that has been named or dedicated in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization; or
- (2) Any statue, monument, memorial, bust, nameplate, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on public property in honor of any historic conflict, historic entity, historic event, historic figure, or historic organization.

MAINTENANCE

Present law prohibits any person from preventing the governmental entity having responsibility for maintaining any of the items, structures, or areas described in (1) and (2) under PROTECTED ARTICLES from taking proper and appropriate measures, and exercising proper and appropriate means, for the protection, preservation, care, repair, or restoration of such items, structures, or areas.

This bill replaces the present law prohibition with authorization for a public entity having responsibility for maintaining a memorial, or a nonprofit entity acting with permission of the public entity, to take proper and appropriate measures, and exercise proper and appropriate means, for the care, preservation, protection, repair, and restoration of the memorial.

WAIVER PROCESS

Present law authorizes any entity exercising control of public property on which an item, structure, or area described above is located to petition the Tennessee historical commission for a waiver of the prohibitions. A petition for waiver must be in writing and state the reasons upon which the waiver is sought. At any regularly scheduled meeting of the commission, the commission may grant a petition for waiver by a majority vote of those present and voting. The commission may include reasonable conditions and instructions to ensure that any items, structures, or areas are preserved to the greatest extent possible.

This bill replaces the present law waiver petition process with a formal process that includes public notice and an open hearing before the commission where interested parties may offer public comment. The commission's final hearing of a petition will occur no sooner than 180 days after the filing date of the petition. This bill changes the commission vote that is required to grant a waiver petition from a majority vote of those present and voting to a 2/3 vote of the entire membership of the commission by roll call vote. This bill authorizes a party who filed a petition or who testified or submitted evidence at the final hearing to appeal the commission's decision in chancery court.

ENFORCEMENT, REMEDIAL STATUTE, AND EFFECTIVE DATE

This bill authorizes any person who can demonstrate a real interest in a memorial through aesthetic, architectural, cultural, economic, environmental, or historic injury, or through administrative involvement in the waiver process, to seek injunctive relief in chancery court of Davidson County to enforce this bill. To the extent necessary to preserve the status of any memorial prior to a final determination by the commission or the chancery

court, the court may issue an injunction to preserve the memorial and any related public property pending a final ruling on any request for injunctive relief. No bond shall be required for any injunction issued.

This bill specifies that it is remedial in nature and is to be liberally construed in favor of historical preservation.

This bill will take effect on March 14, 2016.

NOTE: It appears that there is a typographical error in the effective date Section.

ON FEBRUARY 18, 2016, THE HOUSE ADOPTED AMENDMENT #1 AND PASSED HOUSE BILL 2129, AS AMENDED.

AMENDMENT #1 changes this bill's effective date from "March 14, 2016" to "upon becoming law".

– Actions (11)

On March 22, 2016 in the Senate:

- Comp. became Pub. Ch. 601

On March 2, 2016 in the Senate:

- Sponsor(s) Added.
- Companion House Bill substituted

On February 29, 2016 in the Senate:

- Placed on Senate Regular Calendar calendar for 3/2/2016

On February 23, 2016 in the Senate:

- Recommended for passage with amendment/s, refer to Senate Calendar Committee Ayes 8, Nays 1 PNV 0

On February 17, 2016 in the Senate:

- Placed on Senate State and Local Government Committee calendar for 2/23/2016

On February 16, 2016 in the Senate:

- Action deferred in Senate State & Local Government Committee to 2/23/2016

On February 10, 2016 in the Senate:

- Placed on Senate State and Local Government Committee calendar for 2/16/2016

On January 25, 2016 in the Senate:

- Passed on Second Consideration, refer to Senate State and Local Government Committee

On January 21, 2016 in the Senate:

- Introduced, Passed on First Consideration
- Filed for introduction

– Sponsors (11)

TN - Senator Bill Ketron (R)

Type:

Primary Sponsor

TN - Senator Frank S. Niceley (R)

TN - Senator Janice Bowling (R)

TN - Senator Joey Hensley (R)

TN - Senator Ken Yager (R)

TN - Senator Kerry Roberts (R)

TN - Senator Mae Beavers (R)

TN - Senator Mark Norris (R)

TN - Senator Paul Bailey (R)

TN - Senator Richard Briggs (R)

TN - Senator Rusty Crowe (R)

– Vote

February 23, 2016: SENATE STATE AND LOCAL GOVERNMENT COMMITTEE: Recommended for passage with amendment/s, refer to Senate Calendar Committee Ayes 8, Nays 1 PNV 0

- Yeas: 8
- Nays: 1