

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S2/13/23

A Bill

SENATE BILL 121

5 By: Senator M. Johnson
6 By: Representative Gazaway
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS STATE CAPITOL AND
10 HISTORICAL MONUMENT PROTECTION ACT; TO DECLARE AN
11 EMERGENCY; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO AMEND THE ARKANSAS STATE CAPITOL AND
16 HISTORICAL MONUMENT PROTECTION ACT; AND
17 TO DECLARE AN EMERGENCY.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 22-3-2102, concerning definitions under the
23 Arkansas State Capitol and Historical Monument Protection Act, is amended to
24 add an additional subdivision to read as follows:

25 (6) "Temporary" means sixty (60) days or less.
26

27 SECTION 2. Arkansas Code § 22-3-2104(f), concerning the preservation
28 of historical monuments, is amended to add additional subdivisions to read as
29 follows:

30 (3)(A)(i) If a waiver is not granted by the Arkansas History
31 Commission to remove a historical monument or memorial and the historical
32 monument or memorial is removed or has been removed without a waiver, a
33 citizen may bring an action in a court of competent jurisdiction to enjoin
34 the removal of the historical monument or memorial without a waiver.

35 (ii) The court of competent jurisdiction shall:

36 (a) Enjoin the removal of the historical



1 monument or memorial; or

2 (b) Order the governmental entity having title
3 to, or custody of, the removed historical monument or memorial to restore the
4 historical monument or memorial to its original condition and location.

5 (B) Subdivision (f)(3)(A) of this section applies to a
6 historical monument or memorial removed without a waiver after April 28,
7 2021, or a historical monument or memorial still in the possession of the
8 public entity and removed in the last five (5) years.

9 (4) A grant of a waiver or denial of a waiver under this
10 subchapter is binding on the entity, and the entity is not authorized to
11 petition for the grant of a waiver absent a substantial change in
12 circumstances justifying the waiver.

13 (5) The decision of the Arkansas History Commission either
14 granting or denying a waiver under this subchapter shall be:

15 (A) In writing; and

16 (B) Maintained as a permanent record of the Arkansas
17 History Commission.

18
19 SECTION 3. Arkansas Code § 22-3-2105, concerning applicability under
20 the Arkansas State Capitol and Historical Monument Protection Act, is amended
21 to add additional subsections to read as follows:

22 (f)(1)(A) In any action to enforce the rights granted by this
23 subchapter, or in any appeal from an action under subsection (b) of this
24 section, the court of competent jurisdiction may assess against the defendant
25 reasonable attorney's fees and other litigation expenses reasonably incurred
26 by a plaintiff who has obtained a ruling in favor of the plaintiff, unless
27 the court of competent jurisdiction finds that the position of the defendant
28 was substantially justified.

29 (B) For the purposes of this section, a proceeding is
30 "substantially justified" if it had a reasonable basis in law or fact at the
31 time it was initiated.

32 (2) If the defendant has substantially prevailed in the action,
33 the court of competent jurisdiction may assess expenses against the plaintiff
34 only upon a finding that the action was initiated primarily for frivolous or
35 dilatory purposes.

36 (g)(1) Notwithstanding subdivision (f)(1) of this section, the court

1 of competent jurisdiction shall not assess reasonable attorney's fees or
2 other litigation expenses reasonably incurred by a plaintiff against the
3 State of Arkansas or a department, agency, or institution of the state.

4 (2)(A) A plaintiff who substantially prevails in an action under
5 this section against the State of Arkansas or a department, agency, or
6 institution of the state may file a claim with the Arkansas State Claims
7 Commission to recover reasonable attorney's fees and other litigation
8 expenses reasonably incurred.

9 (B) A claim for reasonable attorney's fees and litigation
10 expenses reasonably incurred in an action against the State of Arkansas or a
11 department, agency, or institution of the state shall be filed with the
12 Arkansas State Claims Commission under § 19-10-201 et seq. within sixty (60)
13 days of the final disposition of an action under this section.

14
15 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
16 General Assembly of the State of Arkansas that the State Capitol, monuments,
17 veterans' cemeteries, and other historical monuments require additional
18 protection; that the historical monuments have an irreplaceable value to the
19 people of Arkansas who wish to preserve these venerated treasures; and that
20 this act is immediately necessary because there is a continuing and imminent
21 threat to historical monuments, and the preservation of these historical
22 monuments protects the public peace. Therefore, an emergency is declared to
23 exist, and this act being immediately necessary for the preservation of the
24 public peace, health, and safety shall become effective on:

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

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

29 (3) If the bill is vetoed by the Governor and the veto is
30 overridden, the date the last house overrides the veto.

31
32 /s/M. Johnson
33
34
35
36