

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4
5 By: Senator M. Johnson
6

A Bill

SENATE BILL 121

For An Act To Be Entitled

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

Subtitle

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

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 22-3-2102, concerning definitions under the
22 Arkansas State Capitol and Historical Monument Protection Act, is amended to
23 add an additional subdivision to read as follows:

24 (6) "Temporary" means sixty (60) days or less.
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26 SECTION 2. Arkansas Code § 22-3-2104(f), concerning the preservation
27 of historical monuments, is amended to add additional subdivisions to read as
28 follows:

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

34 (ii) The court of competent jurisdiction shall:

35 (a) Enjoin the removal of the historical
36 monument or memorial; or



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

4 (B) Subdivision (f)(3)(A) of this section applies to a
 5 historical monument or memorial removed before April 28, 2021.

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

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

12 (A) In writing;

13 (B) Maintained as a permanent record of the Arkansas
 14 History Commission; and

15 (C) Provided to the court of competent jurisdiction if the
 16 grant of a waiver or denial of a waiver is appealed.

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

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

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

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

35 (g)(1) Notwithstanding subdivision (f)(1) of this section, the court
 36 of competent jurisdiction shall not assess reasonable attorney's fees or

1 other litigation expenses reasonably incurred by a plaintiff against the
2 State of Arkansas or a department, agency, or institution of the state.

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

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

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

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

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

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

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