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Current through the 2019 Regular Session

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4-1-412. Tennessee heritage protection.

(a) For purposes of this section:

(1) "Commission" means the Tennessee historical commission;

(2) "Historic conflict" 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 in, including, but not limited to, the French and Indian War, American Revolution, War of 1812, United States-Mexican War, the War Between the States, Spanish American War, the Mexican border period, World War I, World War II, the Korean War, the Vietnam War, Operation Urgent Fury (Grenada), Operation El Dorado Canyon (Libya), Operation Just Cause (Panama), Operation Desert Shield/Desert Storm (Persian Gulf War I), Operation Enduring Freedom (Afghanistan), and Operation Iraqi Freedom (Persian Gulf War II);

(3) "Historic entity" means any entity recognized as having state, national, military, or historical significance;

(4) "Historic event" means any event recognized as having state, national, military, or historical significance;

(5) "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;

(6) "Historic organization" means any entity that has as one (1) or more of its material missions as the recognition or preservation of any historic conflict, historic entity, historic event, or historic figure;

(7) "Memorial" means:

(A) 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

(B) Any statue, monument, memorial, bust, nameplate, historical marker, 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; and

(8) "Public property" means 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.

(b)

(1) Except as otherwise provided in this section, no memorial regarding a historic conflict, historic entity, historic event, historic figure, or historic organization that is, or is located on, public property, may be removed, renamed, relocated, altered, rededicated, or otherwise disturbed or altered.

(2) No memorial or public property that contains a memorial may be sold, transferred, or otherwise disposed of by a county, metropolitan government, municipality, or other political subdivision of this state.

(3)

(A) Notwithstanding subdivision (b)(1), a public entity having responsibility for maintaining a memorial, or a nonprofit entity acting with permission of the public entity, shall have the authority to take proper and appropriate measures, and exercise proper and appropriate means, for the care, preservation, protection, repair, restoration, and renovation of the memorial.

(B) This subdivision (b)(3) shall not be construed to authorize:

(i) Permanent removal or concealment of a memorial; or

(ii) Temporary removal or concealment of a memorial for a period exceeding forty-five (45) calendar days in any twelve-month period.

(c)

(1) A public entity exercising control of a memorial may petition the commission for a waiver of subdivision (b)(1) or (b)(2), or both, if applicable. A public entity shall petition the commission for a waiver prior to undertaking any action or transaction, including any action or transaction involving a nonprofit entity or private party, that could foreseeably violate the restrictions imposed by this section.

(2) The petition for waiver shall be in writing and shall state the basis upon which the waiver is sought. The petition shall be supported by one (1) or more reports showing that there is a material or substantial need for a waiver based on historical or other compelling public interest. The petition shall also identify by name and address any private entities, groups, or individuals, including, but not limited to, descendants, that may have an interest in receiving notice of the petition. The petition for waiver shall be filed with the commission with proof of public notice as required by subdivision (c)(3).

(3) Prior to filing the petition for waiver, the public entity seeking a waiver shall publish notice of the petition for waiver on the web site of the public entity, if any, and in at least one (1) newspaper of general circulation serving the area of the memorial and one (1) in Davidson County. The notice shall state the basis on which the waiver is sought and shall provide that a copy of the petition and all supporting reports will be provided to any interested party at no cost upon written request submitted to the public entity filing or intending to file the petition for waiver.

(4) An initial hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than sixty (60) calendar days after a petition is filed. At the initial hearing, the commission shall determine which interested entities, groups, or individuals should be given written notice by the public entity, including copies of the petition and supporting reports. The public entity may be directed to provide supplemental notice by publication if deemed necessary by the commission. If an amendment to the petition is filed, the public entity shall provide supplemental notice. If supplemental notice is required either by the commission or as a result of an amendment, notice shall be given in the same manner as notice required pursuant to subdivision (c)(3).

(5) A final hearing before the commission on a petition for waiver shall be scheduled at any regular commission meeting no sooner than one hundred eighty (180) calendar days after a petition is filed; provided, that if an amendment to the petition is filed, then no final hearing shall be scheduled until at least one hundred eighty (180) calendar days have elapsed from the date of the filing of the amendment.

(6) An interested entity, group, or individual shall be afforded an opportunity to offer public comments regarding a petition for waiver at any commission hearing on a petition. An interested entity, group, or individual may file a memorandum, report, study, letter, or other document related to the petition for consideration by the commission. In addition, an interested entity, group, or individual may intervene in any petition for waiver by filing written notice with the commission not less than forty-five (45) calendar days prior to the final hearing. Upon filing notice, the interested entity, group, or individual shall be a party in all proceedings on the petition for waiver, shall receive copies of all filings, and may present relevant testimony and evidence at any hearing on the petition. Once notice is filed with the

commission, the status of the interested entity, group, or individual as a party to the petition for waiver, and any subsequent or concurrent administrative or judicial proceedings, may only be waived in writing by the interested entity, group, or individual.

(7) All hearings regarding a petition for waiver shall be recorded. Copies of the record and all exhibits shall be available to any interested entity, group, or individual at the cost of the public entity seeking the waiver.

(8)

(A) In order for a waiver to be granted, the public entity seeking the waiver shall demonstrate by clear and convincing evidence that a material or substantial need for a waiver based on historical or other compelling public interest exists; provided, that if a memorial is designated as a national historic landmark or listed on the national register of historic places, there shall be a presumption in favor of preservation of the memorial.

(B) At the final hearing, the commission may grant a petition for waiver, in whole or in part, by a two-thirds (2/3) vote of the entire membership of the commission by roll call vote. The commission may include reasonable conditions and instructions to ensure that a memorial is preserved and remains publicly accessible to the greatest extent possible. Any petition for waiver that fails to receive a two-thirds (2/3) vote shall be denied. Within thirty (30) calendar days from the final hearing, the final determination of the commission shall be reduced to writing and shall state the commission's findings and the grounds on which the relief is granted or denied. The effective date of the determination shall be not less than one hundred twenty (120) calendar days after notice of the commission's determination is posted on the web site of the commission. Copies of the final determination shall be sent to the public entity seeking the waiver and to each interested entity, group, or individual who testified or submitted evidence at the final hearing.

(9) A public entity seeking a waiver or interested entity, group, or individual who intervened in accordance with subdivision (c)(6) who is aggrieved by the final determination of the commission on the petition for a waiver may file a petition for review in the chancery court of Davidson County or, alternatively, in the county in which the memorial is located or, in the case of a memorial that is located in multiple counties, the county in which the memorial is predominantly located. A petition for review shall be filed within sixty (60) calendar days after notice of the commission's determination is posted on the web site of the commission. The court shall conduct a de novo review on the record of the issues. The review shall be conducted without a presumption that the determinations and findings of the commission are correct. Additional evidence may be introduced and considered by the court.

(d) Any entity, group, or individual who can demonstrate a real interest in a memorial through aesthetic, architectural, cultural, economic, environmental, or historic injury, through petition for declaratory order, or through administrative involvement in either the waiver or complaint process, has standing to seek injunctive or other relief in chancery court of Davidson County to enforce this section. To the extent necessary to preserve the status of any memorial prior to a final determination on a waiver or complaint by the commission, administrative law judge, or chancery court, the court shall issue a restraining order or injunction to preserve the memorial and any related public property pending a final ruling on any request for injunctive relief. No bond or other security shall be required for any restraining order or other injunctive relief issued.

(e)

(1) This section shall apply to any memorial in existence prior to January 1, 1970, and those lawfully created, erected, named, or dedicated on or after January 1, 1970.

(2) This section shall not apply to any memorial 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. The department shall strive to ensure that any memorial is preserved to the greatest extent possible.

(3) This section shall not apply to a memorial that has reached the end of its useful life and is approved for demolition by the state building commission in accordance with § 4-15-102; provided, that, prior to any decision to demolish a memorial designated as a national historic landmark or listed on the register of historic places, the historical commission shall make comments to the state building commission in accordance with § 4-11-111.

(4) This section shall not apply to a memorial under the control of an accredited museum when:

(A) Housed within the interior of the museum, or museum storage facility, located on public property; or

(B) Exhibited or displayed on public property as part of a traveling or temporary exhibition, display, or loan.

(5) This section shall not apply to a memorial under the control of a public library or public archive when:

(A) Housed within the interior of the library or archive, or library or archive storage facility, located on public property; or

(B) Exhibited or displayed on public property as part of a traveling or temporary exhibition, display, or loan.

(f)

(1) The commission has authority to receive and consider complaints alleging violations of subdivision (b)(1), (b)(2), or (b)(3)(B).

(2) Complaints may be filed by any entity, group, or individual. All complaints must be in writing on a uniform complaint form to be posted on the website of the commission. Complaints must be filed within one hundred twenty (120) calendar days of the alleged violation.

(3) A hearing on a complaint must be set within one hundred twenty (120) calendar days after the complaint is filed. Multiple complaints alleging the same violation must be joined. The complainant and public entity shall be given at least thirty (30) calendar days' notice of the date of the hearing. The complainant and the public entity shall be afforded the opportunity to present evidence at the hearing. At the hearing, the commission may determine that a violation has occurred by a majority vote of the entire membership of the commission; provided, that if the complainant is a member of the commission, the member shall not participate in the commission's deliberations or vote on the complaint. If a violation has occurred, the commission shall prepare a written violation determination. The complaint shall be deemed dismissed if a violation is not determined to have occurred at the hearing. Once acted upon, no complaint alleging the same, or substantially the same, violation by the same public entity during the same episode shall be received and considered by the commission unless initiated by the commission.

(4) The commission shall transmit a copy of a violation determination to the public entity and to the department of economic and community development.

(5) A public entity that violates any provision of this section shall be precluded from entering into grant contracts administered by the commission and the department of economic and community development for a period of five (5) years from the date upon which a violation determination is made.

(g) The commission, at its discretion, may assist any public entity or historic organization with preservation of a memorial through consultation, best practices, or other available resources.

(h) Notwithstanding any provision of this section, in lieu of a waiver, a historic organization may petition the commission to transfer ownership of, relocate, or both transfer ownership of and relocate, a memorial to the historic organization with the consent of the public entity exercising control over the memorial. The petition must be filed with a copy of a resolution, ordinance, or order from the governing body of the public entity consenting to the transfer, relocation, or both transfer and relocation. The petition must include an assessment of costs associated with the transfer, relocation, or both transfer and relocation, and identify who will be responsible for the costs. If the petition includes relocation, a description or map of the proposed location must be submitted with the petition. A memorial may be relocated only to an accessible and suitable location within this state as determined by the commission. The commission may approve a petition upon a majority vote of the entire membership of the commission.

(i) The Uniform Administrative Procedures Act, compiled in chapter 5 of this title, shall apply to this section except to the extent that the provisions of this section conflict, in which case this section shall control.

History

Acts 2013, ch. 75, § 2; 2016, ch. 601, § 2; 2017, ch. 201, §§ 1, 2; 2018, ch. 1033, §§ 1-9.

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