

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

Legal Notice Advertisement

The Arkansas Department of Parks, Heritage & Tourism, Division of Heritage is proposing rules for the Arkansas State Capitol and Historical Monument Protection Act of 2021.

The Arkansas State Capitol and Historical Monument Protection Act prohibits the removal, relocation, alteration or renaming of a memorial that is located on public property. The Act provides that a public entity exercising control of a memorial may petition the Arkansas History Commission in writing for a waiver from the prohibition if the monument will be moved or relocated for more than sixty (60) days. The Act also requires governmental entities to register historical monuments erected after the effective date of this Act (April 28, 2021) with the Arkansas History Commission.

These proposed rules include establishing processes for an application procedure for waivers, a registration process for historical monuments as well as a process to request an advisory opinion to determine whether a structure or object is considered an historical monument.

The Department is accepting public comment on these proposed rules through February 17, 2022. Interested persons may review these proposed rules and make comments online at state.archives@arkansas.gov. Written comments may be returned to Leslie Fiskien, Chief of Legislative Affairs, Arkansas Department of Parks, Heritage & Tourism, 1100 North Street, Little Rock, AR 72201, Phone: (501) 324-9162.

A public comment hearing will be held on February 11, 2022 at 10:00 a.m. at the Arkansas Department of Parks, Heritage & Tourism, Division of Heritage, 1100 North Street, Diamond Room, Little Rock, AR 72201. A link for virtual attendance will be made available online through the Division of Heritage, Arkansas State Archives website at <https://www.arkansasheritage.com/arkansasstatearchives/home>.



The rules for the Arkansas State Capitol and Historical Monument Protection Act of 2021 are being proposed by the Arkansas Department of Parks, Heritage & Tourism. The Division of Arkansas Heritage is a division within the Arkansas Department of Parks, Heritage and Tourism.

Since 1975, the Division of Arkansas Heritage has been charged with discovering, strengthening, protecting and preserving Arkansas's natural and cultural heritage. To fulfill its mission, the Division of Arkansas Heritage coordinates the following natural and cultural heritage resource areas:

The Heritage Museums: Museums research, preserve, present, and interpret historic structures, objects, and natural and cultural assets. They serve as a partner in education with public and private schools throughout Arkansas. The department's four museums are the Delta Cultural Center, Historic Arkansas Museum, Mosaic Templars Cultural Center and Old State House Museum.

The Heritage Resource Agencies: The Arkansas Natural Heritage Commission identifies, protects and promotes areas that best exemplify Arkansas's rich heritage of biological diversity. These areas might be habitat for rare or disappearing species, or natural communities such as a tallgrass prairie or a river and its dependent aquatic system. The Arkansas Arts Council and the Arkansas Historic Preservation Program are conduits for federal and state grant money, and they provide technical assistance for developing and conserving Arkansas's cultural resources. They preserve and promote Arkansas's cultural resources, including Arkansas's fine and traditional arts and historic structures, landscapes, and archeological sites. The Arkansas State Archives collect and preserve the official records and historical materials for the state of Arkansas. These include state, county, and federal records, manuscript materials, newspapers, military records, family histories, an extensive Arkansas history and genealogy library, and a collection of Arkansas art and artifacts.

ARKANSAS DEPARTMENT OF PARKS, HERITAGE AND TOURISM
Arkansas State Capitol and Historical Monument Protection Act Rules
Effective Date: Based on legislative approval

1.0 REGULATORY AUTHORITY AND PURPOSE

- 1.01 The Arkansas Department of Parks, Heritage and Tourism enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §22-3-2101 et seq., Arkansas History Commission § 13-3-103 et seq. and §25-15-201 et seq., Ark. Code Ann. §25-15-203 (a)(1)(2).
- 1.02 The purpose of these rules in accordance with the Arkansas State Capitol and Historical Monument Protection Act, Act 1003 of 2021, codified as Ark. Code Ann. § 22-3-2101 et seq., is to (1) establish a process for the application of a waiver; (2) establish guidelines and process on what will be designated as an historical monument; (3) create a registration process for historical monuments erected after the passage of Act 1003 (4) establish guidelines for the disposition of historical monuments if a waiver is granted; and (5) otherwise effectuate the purposes of Act 1003.

2.0 ORGANIZATION

- 2.01 The Arkansas State Capitol and Historical Monument Protection Act shall be implemented by the Arkansas History Commission as part of Arkansas State Archives as set forth in Act 1003 of 2021.

3.0 DEFINITIONS

- 3.01 "Arkansas State Archives" means the Arkansas State Archives which is an agency within the Division of Arkansas Heritage at the Arkansas Department of Parks, Heritage and Tourism.
- 3.02 "Department" means the Arkansas Department of Parks, Heritage and Tourism.
- 3.03 "History Commission" means the Arkansas History Commission. The Arkansas History Commission was created under Arkansas Code Ann. § 13-3-102 and consists of seven members appointed by the Governor that serve as the Arkansas Historical Advisory Board to assist public and private nonprofit organizations throughout the state in the acquisition, preservation and use of records of enduring value. The Arkansas History Commission is a part of the Arkansas State Archives. The Commission's primary statutory purpose is to advise and assist the Secretary of the Arkansas Department of Parks, Heritage and Tourism in the discharge of his or her duties in regard to the Arkansas State Archives.
- 3.04 "Historical monument" means a statue, memorial, gravestone marker, plaque, or historic flag display that is located on public property and was installed, erected for, or named or dedicated in honor of an historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit. Examples of historical events that shall be recognized are provided in the guidelines accompanying these rules.
 - 3.04.1 "Historical monument" does not include:
 - 3.04.1.1 A temporary exhibit
 - 3.04.1.2 A temporary structure
 - 3.04.1.3 A street sign
 - 3.04.1.4 Public property of the Arkansas State Highway Commission
- 3.05 "Memorial" means an identifiable place or thing that is set aside for the purpose of preserving the memory of an historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit.
- 3.06 "Person" means an individual or entity.
- 3.07 "Public property" means all real or personal property owned or leased by the state, a county, a municipality, or any other entity or subdivision of the state, a county, or a municipal entity that is created by an act of the General Assembly to perform a public function.
- 3.08 "Staff" means staff employed by the Arkansas State Archives or other employees of the Division of Arkansas Heritage as directed to assist the History Commission by the Secretary of the Arkansas Department of Parks, Heritage and Tourism.

- 3.09 "State Capitol" means the land, parking areas, and streets surrounding the State Capitol Building, the Capitol Hill Apartments building, the Grounds Operations shop, and other land that is maintained by the Secretary of State.

4.0 PRESERVATION OF HISTORICAL MONUMENTS

- 4.01 An historical monument shall not be relocated, vandalized, damaged, destroyed, removed, altered, renamed, rededicated, or otherwise disturbed.
- 4.02 Section 4.01 does not prohibit a governmental entity having responsibility for maintaining an historical monument from:
- 4.02.1 Taking proper and appropriate measures, and exercising proper and appropriate means, for the protection, preservation, care, repair, or restoration of the historical monument; and
- 4.02.2 Temporarily removing or relocating the historical monument to repair public property or any public infrastructure surrounding the historical monument if the governmental entity removes or relocates the historical monument for less than sixty (60) days and ensures the protection of the historical monument while the historical monument is removed or relocated.
- 4.03 Section 4.01 does not prohibit a local government entity from removing, storing, stabilizing, altering, or otherwise displacing an historical monument for less than sixty (60) days to install, relocate, repair, or alter a public infrastructure if the local government entity exercises proper and appropriate means for the protection, preservation, care, repair, or restoration of the historical monument.
- 4.03.1 If a local government entity plans to remove, store, stabilize, alter, or otherwise displace an historical monument for more than sixty (60) days to install, relocate, repair, or alter a public infrastructure, the local government shall obtain a waiver from the History Commission. In the waiver application, the public utility shall include details to ensure the protection of the historical monument while the historical monument is removed or relocated.
- 4.04 Section 4.01 does not apply to the replacement or repair of a frayed, soiled, or damaged flag that is part of a historic flag display if the frayed, soiled, or damaged flag is replaced with a similar flag.
- 4.05 Section 4.01 does not apply to the Capitol Arts and Grounds Commission or the office of the Secretary of State.

5.0 APPLICATION PROCESS

- 5.01 Application for Advisory Opinion of Designation of an Historical Monument.
A governmental entity may request an advisory opinion from the History Commission of whether a statue, memorial, gravestone marker, plaque, or historic flag display qualifies as an historical monument under § 22-3-2101. The History Commission guidelines provide parameters for designation of historical monuments including historic conflicts, historic entities, historic events, historic figures, historic organizations, and memorials. The guidelines will be available on the Arkansas State Archives website at www.arkansasheritage.com/arkansasstatearchives/home. Guidelines follow and are in accordance with the historical monument definition provided in Section 3.0.
- 5.01.1 Any entity seeking an advisory opinion concerning historical monument designation may submit an application to the History Commission using the Historic Designation application available on the Arkansas State Archives website at www.arkansasheritage.com/arkansasstatearchives/home.
- 5.02 Application for Waiver from the Arkansas State Capitol and Historical Monument Protection Act.
An entity exercising control of public property that is an historical monument or on which an historical monument is situated may petition the History Commission for a waiver from the requirements of Section 4.0.
- 5.02.2 Applicants may complete a Petition for Waiver form provided by Arkansas State Archives that include a justification for the waiver including the stated reason the waiver is sought. The application for waiver may include the submission of detailed information and documentation supporting the petition.

5.02.3 Application for a waiver must be received and approved prior to any removal that lasts longer than sixty (60) days.

5.02.3.1 Application for a waiver depends on the duration of the waiver and/or the type of repair or removal that will be made.

5.02.4 All Petitions for Waiver submitted to the Arkansas State Archives will be reviewed by Staff who will conduct an evaluation and make a recommendation of determination.

5.03 All applicants shall utilize processes and forms developed by Arkansas State Archives. The forms will be available online at www.arkansasheritage.com/arkansasstatearchives/home. All applications shall be submitted electronically to the Arkansas State Archives through the email address of HistoricalMonumentProtectionAct@arkansas.gov.

All applications for an advisory opinion of designation of an historical monument or a petition for waiver submitted to the Arkansas State Archives will be reviewed by Staff who will conduct an evaluation and make a recommendation of determination. The History Commission shall consider the application for advisory opinion of designation of an historical monument and/or the petition for waiver and the staff recommendation in making a determination. The application process will be available online on the State Archives website at www.arkansasheritage.com/arkansasstatearchives/home.

5.04 The recommendation of determination by the Staff shall be submitted electronically to the History Commission, the Director of Arkansas State Archives, the Director of Division of Heritage, and to the Secretary of the Arkansas Department of Parks, Heritage and Tourism.

5.05 The History Commission may issue an advisory opinion of designation of an historical monument or grant a petition for waiver by a majority vote of those present and voting at a regularly scheduled History Commission meeting. The decision will be made in writing and submitted electronically to the applicant. The decision will include reasonable conditions and instructions.

6.0 PREVIOUSLY REMOVED MONUMENT IN POSSESSION OF GOVERNMENTAL ENTITY

6.01 A governmental entity shall request a waiver from the History Commission for an historical monument that previously has been removed but is still in the possession of a governmental entity to determine the disposition of the historical monument.

7.0 WAIVER GRANTED

7.01 If a waiver is granted by the History Commission, the waiver shall be in writing and shall include reasonable conditions and instructions to ensure that the historical monument is preserved to the greatest extent possible.

7.02 If a waiver is granted by the History Commission for the removal of an historical monument, the waiver shall be in writing and include reasonable conditions and instructions for the disposition of the historical monument. These guidelines will be available regarding disposition on the Arkansas State Archives website at www.arkansasheritage.com/arkansasstatearchives/home.

8.0 APPLICABILITY

8.01 A petition for a waiver may be authorized under § 22-3-2104 (b) if the application of this subchapter interferes with the construction, maintenance, or operation of a public facility owned or managed by the Arkansas Department of Parks, Heritage, and Tourism.

9.0 APPLICATION OF TIMING

9.01 An historical monument in existence on the effective date of § 22-3-2101, April 28, 2021, is considered an historical monument for the purposes of Act 1003 of 2021.

9.02 An historical monument not currently displayed by a public entity is considered an historical monument for the purposes of Ark. Code Ann. § 22-3-2101 et seq.