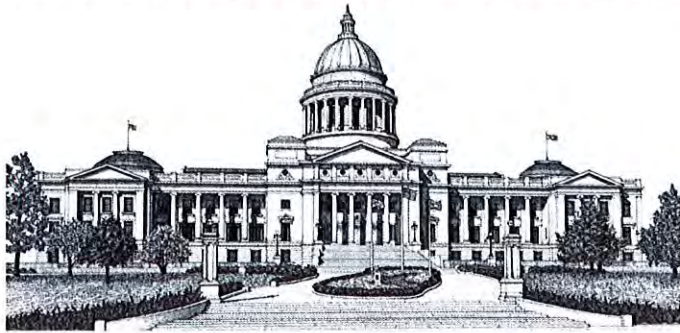


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# ARKANSAS REGISTER



## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State

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**For Office**

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Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Department of Parks, Heritage & Tourism

Department Division of Heritage

Contact Leslie Fiskin E-mail leslie.fiskin@arkansas.gov Phone (501) 324-9586

Statutory Authority for Promulgating Rules Ark. Code Ann. §22-3-201 et seq., § 13-3-103 et seq., §25-15-201 et seq., §25-15-203 (a)(1)(2)

Rule Title: Arkansas State Capitol and Historical Monument Protection Act Rules

**Intended Effective Date**

(Check One)

**Date**

☐ Emergency (ACA 25-15-204)

Legal Notice Published .....

Jan. 16 through Jan. 18, 2022

☒ 10 Days After Filing (ACA 25-15-204)

Final Date for Public Comment .....

February 17, 2022

☐ Other \_\_\_\_\_  
(Must be more than 10 days after filing date.)

Reviewed by Legislative Council .....

June 17, 2022

Adopted by State Agency .....

June 27, 2022

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Leslie Fiskin

leslie.fiskin@arkansas.gov

June 17, 2022

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Leslie Fiskin

Signature

(501) 324-9586

Phone Number

leslie.fiskin@arkansas.gov

E-mail Address

Chief of Legislative Affairs

Title

June 17, 2022

Date

**ARKANSAS DEPARTMENT OF PARKS, HERITAGE AND TOURISM**  
Arkansas State Capitol and Historical Monument Protection Act Rules  
Effective Date: June 27, 2022

**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, the "Act" codified as Ark. Code Ann. § 22-3-2101 *et seq.*, is to (1) establish a process for the application of a waiver under the Act; (2) create a process for the approval of a temporary waiver on an emergency basis; (3) establish guidelines regarding what will be designated as a historical monument; (4) create an application process for registering historical monuments erected after April 28, 2021; (5) establish guidelines for the disposition of historical monuments if a waiver is granted to remove a historical monument; and (6) otherwise effectuate the purposes of §22-3-2101 *et seq.*

**2.0 ORGANIZATION**

- 2.01 The rules required under the Arkansas State Capitol and Historical Monument Protection Act shall be promulgated, interpreted, and 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 "Act" means the Arkansas State Capitol and Historical Monument Protection Act as codified at Ark. Code Ann. § 22-3-2101 *et seq.*
- 3.02 "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.
- 3.03 "Department" means the Arkansas Department of Parks, Heritage and Tourism.
- 3.04 "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.

3.05 "Historical Monument" means a statue, memorial, gravestone plate, plaque, or historic flag display that is located: (i) on public property and was installed, erected for, or named or dedicated in honor of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit, including without limitation (a) the French and Indian War, (b) the American Revolution, (c) the War of 1812, (d) the Mexican-American War, (e) the American Civil War, (f) the Spanish-American War, (g) the Mexican Border War, (h); World War I, (i) World War II, (j) the Korean Conflict, (k) the Vietnam War, (l) Operation Urgent Fury, (m) Operation El Dorado Canyon, (n) Operation Just Cause, (o); the Gulf War, (p) Operation Enduring Freedom, (q) Operation Iraqi Freedom; (ii) on public property and has been listed on the National Register of Historic Places; or (iii) in a veteran's cemetery.

3.05.1 "Historical Monument" does not include:

3.05.1.1 A temporary exhibit;

3.05.1.2 A temporary structure;

3.05.1.3 A street sign; or

3.05.1.4 Public property of the Arkansas State Highway Commission.

3.06 "Memorial" means an identifiable place that is set aside for the purpose of preserving the memory of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit.

3.07 "Monument" means a statue, building, or other structure erected to commemorate a famous or notable person or event.

3.08 "Person" means an individual or entity.

3.09 "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.

3.10 "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.

3.11 "State Capitol," per statute, 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 Except as permitted by law or authorized under these rules, a 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 a 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 a 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 a 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 a 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 it 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 PROCEDURES**

- 5.01 Determinations to be made by the History Commission under the Act shall be initiated through the submission of a written application. Applications shall be submitted for the following purposes: (1) seeking a waiver under the Act; (2) seeking a temporary waiver under the Act on an emergency basis; (3) seeking an advisory opinion on whether an item is a Historical Monument; (4) registering a historical monument erected after April 28, 2021, and (5) seeking the guidance on the disposition of a Historical Monument if a waiver has been granted. The application forms will be made available online at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home) or other web address as established by the Department.
- 5.02 The History Commission may place a hold on, or deny, review of an incomplete application, including one not submitted on the proper form. Staff shall assist all applicants in ensuring a complete and accurate application is submitted. All applications shall be submitted electronically

to the Arkansas State Archives through the email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or at such other email address as may be designated by the Department from time to time.

5.03 All applications received will first be reviewed by Staff who will conduct an evaluation of each submission in accordance with the Act, these rules, and the subject matter of the application. Thereafter, when Staff has had reasonable time within which to conduct an adequate evaluation, it shall make a recommendation of determination to the History Commission at its next meeting. The History Commission reserves the right to remand applications back to the applicant and Staff for further development when it does not have enough information with which to make a determination. In such event, the History Commission shall provide the necessary guidance to the applicant and the Staff.

5.04 The final decisions of the History Commission shall be documented in writing.

5.05 Application for Waiver from the Arkansas State Capitol and Historical Monument Act

5.05.1 The Act does not prohibit a governmental entity having responsibility for maintaining a Historical Monument from: (a) taking proper and appropriate measures, and exercising proper and appropriate means for the protection, preservation, care, repair or restoration of the Historical Monument; and (b) temporarily removing or relocating the Historical Monument to repair public property or any public infrastructure surrounding the Historical Monument if the governmental entity (i) removes or relocates the Historical Monument for less than sixty (60) days and (ii) ensures the protection of the Historical Monument while the Historical Monument is removed or relocated. Under such circumstances, no application for waiver need be submitted.

5.05.2 A Person exercising control of public property that is a Historical Monument or on which a Historical Monument is situated may apply to the History Commission for a waiver from the requirements of Section 4.0.

5.05.3 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. The application forms will be made available online at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home) or other web address as established by the Department.

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

5.06 Application for a Temporary Waiver from the Arkansas State Capitol and Historical Monument Protection Act on an Emergency Basis



5.06.1 If circumstances exist such that: (a) the Act does not permit removal and relocation of a Historical Monument without a waiver from the History Commission; (b) the procedures for the application and receipt of a waiver from the History Commission as provided in Section 5.0 are inapplicable or impractical; and (c) an emergency exists wherein a Historical Monument must be removed or relocated quickly to ensure its protection, preservation, care, repair or restoration, the procedures of Section 5.06 shall apply. Under the foregoing circumstances, a governmental entity having responsibility for a Historical Monument may apply for a temporary waiver.

5.06.2 A temporary waiver on an emergency basis shall be sought by contacting the Secretary of the Arkansas Department of Parks, Heritage and Tourism, to request that a temporary waiver be granted. The request may be made in person, by telephone at (501) 682-6900 or through the email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or at such other email address as may be designated by the Department from time to time and shall include all details necessary to document the basis for the issuance of a temporary waiver. If the application is time critical, the ADPHT Secretary may verbally grant the temporary waiver to ensure the emergency is addressed on a timely basis, but shall require the applicant to submit an application for temporary waiver on an emergency basis per the requirements of Section 4.0 as soon as practical thereafter. The written application shall include a recital of the details of the emergency that resulted in the granting of the temporary waiver and the time period of the waiver as determined by the Secretary of the Arkansas Department of Parks, Heritage and Tourism in his or her reasonable discretion as well as reasonable conditions and instructions to ensure that the Historical Monument is protected to the greatest extent possible. Temporary waivers granted on an emergency basis are reviewable by the History Commission, which may confirm, modify, or rescind the terms of such waivers.

#### 5.07 Application for Determination of a Historical Monument by the History Commission

A governmental entity may request an advisory opinion from the History Commission of whether a statue, memorial, gravestone plate, plaque, or historic flag display qualifies as a Historical Monument under § 22-3-2101 *et seq.* 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 are a part of these rules and will be available on the Arkansas State Archives website at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home).

5.07.1 In accordance with Ark. Code Ann. § 22-3-2105(e) the History Commission shall establish guidelines regarding what will be designated as a Historical Monument. Accordingly, said guidelines shall be in accordance with the express requirements of Ark. Code Ann. § 22-3-2101 *et seq.* and any other Arkansas laws and amendments thereto as such may be made from time to time. Such includes, without limitation, the statutory definition of "Historical Monument" and other definitions as provided at Ark. Code Ann. § 22-3-2102. For matters in which the law may leave this issue to the interpretation of the History Commission, the guidelines shall require

the History Commission to review such matters on a case by case basis and in its collective and subjective opinion take the following factors under consideration: (1) the applicable law so that no determination is made in contravention of the law; (2) the relevance of the item in question to local, state, national, or world history; (3) the location and character of the item and the manner in which it is displayed; (4) whether the item accurately reflects a historical figure or event and in a manner that is commonly accepted to be historical; (5) the credibility of any documentation, including academic papers if available, for the history represented by the item; and (6) public comments from Arkansas residents that may be submitted on the subject matter. Any entity seeking an advisory opinion concerning historical monument designation may submit an application to the History Commission using the Historical Designation application available on the Arkansas State Archives website at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home).

#### 5.07.2 History Commission Evaluation of the Monument

Factors that can be considered include the following items: (a) Association of the monument with events that have made a significant contribution to, and are identified with, or that outstandingly represents, the broad national patterns of United States and/or Arkansas history and from which an understanding and appreciation of those patterns may be gained; (b) Association with the lives of persons nationally significant in the history of the United States and/or Arkansas; or (c) Representation of a historical idea or ideal associated with the people of the United States, generally, or the people of Arkansas. This list is not exclusive as the History Commission may consider other factors.

### 5.08 Application for Registration of Historical Monuments Erected After April 28, 2021

All applications for registration of historical monuments erected after April 28, 2021, will be available on the Arkansas State Archives website at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home). The application shall be submitted through the email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or at such other email address as may be designated by the Department from time to time and shall include all details necessary for applying to register historical monuments.

5.08.1 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.

5.08.2 The History Commission may issue an advisory opinion of designation of a historical monument or grant a petition for waiver by a majority vote of those present and voting at a regularly scheduled History Commission meeting.



5.09 Previously Removed Monument in Possession of Governmental Entity

A governmental entity shall request a waiver from the History Commission for a 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.

**6.0 WAIVER GRANTED**

6.01 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.

6.02 If a waiver is granted by the History Commission for the removal of a 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](http://www.arkansasheritage.com/arkansasstatearchives/home).

**7.0 THE ARKANSAS FREEDOM OF INFORMATION ACT**

The Arkansas Freedom of Information Act (FOIA) codified at Ark. Code Ann. § 25-19-101 *et seq.* requires the History Commission to conduct its deliberations in a public meeting. Accordingly, Staff shall be present at such meetings to answer questions concerning applications that are being reviewed by the History Commission. Under the FOIA law, applicants are permitted to attend the History Commission meetings, but are not entitled to participate in the meeting. However, the Chair of the History Commission may direct questions to an applicant that is in attendance at a meeting and an applicant may respond to the questions asked if called upon to do so.

**7.0 APPLICABILITY**

7.01 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.

**8.0 APPLICATION OF TIMING**

8.01 A historical monument in existence on the effective date of Ark. Code Ann. § 22-3-2101, April 28, 2021, is considered a historical monument for the purposes of Act 1003 of 2021.

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



## **Guidelines for the Arkansas State Capitol and Historical Monument Protection Act of 2021**

### **Ark. Code Ann. § 22-3-2101 et seq.**

The Arkansas State Capitol and Historical Monument Protection Act was enacted in 2021. The Act prohibits the removal, relocation, alteration or renaming of a memorial that is located on public property if the monument will be moved or relocated for more than sixty (60) days. A public entity exercising control of a memorial may petition the Arkansas History Commission in writing for a waiver from the prohibition. After consideration of the petition, the Arkansas History Commission will vote on whether to grant or deny the waiver. The Act also provides for a temporary waiver on an emergency basis that can be submitted and granted verbally or in writing. If a waiver is granted, recommendations as to disposition of the historical monument will be provided by the History Commission.

The Act also requires governmental entities to register historical monuments with the Arkansas History Commission that were erected after the effective date of this Act, April 28, 2021. The governmental entities may request an advisory opinion from the History Commission determining whether the memorial displayed is a historical monument. After consideration of the request, the History Commission will vote on whether the monument is determined to be a historical monument. The History Commission will provide a registration process for the registration of historical monuments that were erected after the effective date of this Act, April 28, 2021.

### **Purpose of the Guidelines**

- The purpose of these guidelines is to explain the application procedure and process established for the Arkansas State Capitol and Historical Monument Protection Act of 2021.

### **Application of Guidelines**

- The guidelines apply to any Arkansas state government entity, county, city, town, or municipality that owns a historical monument. The guidelines do not apply to private entities or businesses that own a historical monument.

### **Advisory Opinion for Historical Designation**

- Any Arkansas state government entity, county, city, town, or municipality that owns a historical monument may seek an advisory opinion from the History Commission as to whether their monument is an eligible monument protected under the Arkansas State Capitol and historical monument Protection Act of 2021.
- Applications may be found on the Arkansas State Archives website at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home). The applications must be submitted online through email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or at such other email address as may be designated by the Department from time to time.
- Monuments are protected under the Arkansas State Capitol and Historical Monument Protection Act include any of the following that are located on public property and were installed, erected for, or named or dedicated in honor of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit.
  - Statue
  - Memorial
  - Gravestone plate
  - Plaque

- Historic flag display
  - Any of the above which has been listed in the National Register of Historic Places; or is located in a state or municipally-owned veterans' cemetery.
- These guidelines apply to Historical Monuments as defined as a statue, memorial, gravestone plate, plaque, or historic flag display that is located: (i) on public property and was installed, erected for, or named or dedicated in honor of a historical person, historical event, public service organization, firefighter, police officer, military organization, or military unit, including without limitation (a) the French and Indian War, (b) the American Revolution, (c) the War of 1812, (d) the Mexican-American War, (e) the American Civil War, (f) the Spanish-American War, (g) the Mexican Border War, (h); World War I, (i) World War II, (j) the Korean Conflict, (k) the Vietnam War, (l) Operation Urgent Fury, (m) Operation El Dorado Canyon, (n) Operation Just Cause, (o); the Gulf War, (p) Operation Enduring Freedom, (q) Operation Iraqi Freedom; (ii) on public property and has been listed on the National Register of Historic Places; or (iii) in a veteran's cemetery.
  - Monuments that are not protected include a temporary exhibit, temporary structure, Street sign and a public property of the State Highway Commission.
  - For a governmental entity that has moved a historical monument prior to April 28, 2021, and the governmental entity is still in possession of the historical monument, the governmental entity must apply for a waiver before any further steps of disposition are taken for the historical monument.
  - The History Commission will consider the applications on a case by case basis and will on matters in which the law may leave this issue to the interpretation of the History Commission, the guidelines shall require the History Commission to review such matters on a case by case basis and in its collective and subjective opinion take the following factors under consideration: (1) the applicable law so that no determination is made in contravention of the law; (2) the relevance of the item in question to local, state, national, or world history; (3) the location and character of the item and the manner in which it is displayed; (4) whether the item accurately reflects a historical figure or event and in a manner that is commonly accepted to be historical; (5) the credibility of any documentation, including academic papers if available, for the history represented by the item; and (6) public comments from Arkansas residents that may be submitted on the subject matter.
  - In evaluation of the applications, the History Commission can consider the following factors in evaluation of the monument to determine whether the item is a historical monument. This list is not exclusive as the History Commission may consider other factors.
    - Association of the monument with events that have made a significant contribution to, and are identified with, or that outstandingly represents, the broad national patterns of United States and/or Arkansas history and from which an understanding and appreciation of those patterns may be gained; or



- Association with the lives of persons nationally significant in the history of the United States and/or Arkansas; or
  - Representation of a historical idea or ideal associated with the people of the United States, generally, or the people of Arkansas.
- In making decisions regarding historical designation, the History Commission may issue an advisory opinion for historical designation by a majority vote of those present and voting at a regularly scheduled History Commission meeting. The decision will be made in writing by the History Commission.
  - A list of registered historical monuments erected after the effective date of this Act, April 28, 2021, will be updated following each History Commission meeting and will be available online at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home).

#### **Waivers- Application and Process**

Determinations to be made by the History Commission under the Act shall be initiated through the submission of an application. Applications shall be submitted for the following purposes: (1) seeking a waiver under the Act; (2) seeking a temporary waiver under the Act on an emergency basis. The application forms will be made available online at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home) or other web address as established by the Department.

- **Waiver**
  - Applications for a waiver may be found on the Arkansas State Archives website at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home). The applications must be submitted online through email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or at such other email address as may be designated by the Department from time to time.
  - The History Commission may place a hold on, or deny, review of an incomplete application, including one not submitted on the proper form. Staff shall assist all applicants in ensuring a complete and accurate application is submitted. All applications shall be submitted electronically to the Arkansas State Archives through the email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or at such other email address as may be designated by the Department from time to time.
  - All applications received will first be reviewed by Staff who will conduct an evaluation of each submission in accordance with the Act, these rules, and the subject matter of the application. Thereafter, when Staff has had reasonable time within which to conduct an adequate evaluation, it shall make a recommendation of determination to the History Commission at its next meeting. The History Commission reserves the right to remand applications back to the applicant and Staff for further development when it does not have enough information with which to make a determination. In such event, the History Commission shall provide the necessary guidance to the applicant and the Staff.

- The History Commission must receive a completed application for a waiver at least two weeks prior to a regularly scheduled meeting of the History Commission immediately preceding the projected removal or relocation for which the waiver is sought. This does not apply to applications for a temporary waiver on an emergency basis.
  - All applications for 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 Petition for Waiver and the Staff recommendation in making a determination.
  - The History Commission may 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 may include reasonable conditions and instructions to ensure that the historical monument is preserved to the greatest extent possible. The decision will be transmitted electronically to applicants to the email address used to submit the applications. Upon request, a hard copy of the decision can be mailed to the applicant.
  - If a waiver is granted for removal of a historical monument, the title of the removed historical monument shall be transferred to the entity receiving the historical monument.
  - The final decisions of the History Commission shall be documented in writing.
- **Temporary Waiver on an Emergency Basis**
    - If circumstances exist such that the Act does not permit removal and relocation of a Historical Monument without a waiver from the History Commission and the procedures for the application and receipt of a waiver from the History Commission are inapplicable or impractical, and an emergency exists where a Historical Monument must be removed or relocated quickly to ensure its protection, preservation, care, repair or restoration, the procedures of a Temporary Waiver on an Emergency Basis shall apply. Under these circumstances, a governmental entity having responsibility for a Historical Monument may apply for a temporary waiver.
    - A temporary waiver on an emergency basis shall be sought by contacting the Secretary of the Arkansas Department of Parks, Heritage and Tourism, to request that a temporary waiver be granted. The request may be made in person, by telephone at (501) 324-9162, or through the email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or at such other email address as may be designated by the Department from time to time and shall include all details necessary to document the basis for the issuance of a temporary waiver.
    - If the application is time critical, the ADPHT Secretary may verbally grant the temporary waiver to ensure the emergency is addressed on a timely basis, but shall require the



applicant to submit an application for temporary waiver on an emergency basis per the requirements of Section 5.0 of the rules as soon as practical thereafter.

- The written application shall include all details of the emergency that resulted in the granting of the temporary waiver and the time period of the waiver as determined by the Secretary of the Arkansas Department of Parks, Heritage and Tourism in his or her reasonable discretion as well as reasonable conditions and instructions to ensure that the Historical Monument is protected to the greatest extent possible.
- Temporary waivers granted on an emergency basis are reviewable by the History Commission, which may confirm, modify, or rescind the terms of such waivers.

#### **Waiver Granted- Disposition of Historical Monuments**

- The History Commission will provide general guidelines if any type of waiver is granted that allows the disposition of a historical monument. The waiver will include information related to the disposition of the monument.
- These guidelines may include, without limitation, return of the historical monument or the donor's heirs or assigns, return of the historical monument to an organization that donated the historical monument or the organization's successor or assigns, return of the historical monument to an organization that donated the historical monument or the organization's successor or assigns, donation of the historical monument to a public entity.

#### **Registration of Historical Monuments**

- Registration is required for monuments erected after the passage of the Arkansas State Capitol and Historical Monument Protection of 2021, April 28, 2021.
- Applications for registration of historical monuments erected after April 28, 2021, will be available on the Arkansas State Archives website at [www.arkansasheritage.com/arkansasstatearchives/home](http://www.arkansasheritage.com/arkansasstatearchives/home).
- The application shall be submitted through the email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or at such other email address as may be designated by the Department from time to time and shall include all details necessary for applying to register historical monuments.
- Applicants should submit supporting documentation with their application. Any documentation submitted with the registration form shall be submitted electronically in PDF or JPG format. Applicant will receive confirmation email upon receipt of application.

#### **Questions**

- Any questions related to the waiver application process can be submitted to the History Commission via email at [HistoricalMonumentProtectionAct@arkansas.gov](mailto:HistoricalMonumentProtectionAct@arkansas.gov) or by phone at (501) 682-6900.

## FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Parks, Heritage and Tourism

DIVISION Division of Arkansas Heritage

PERSON COMPLETING THIS STATEMENT Leslie Fiskin, Chief of Legislative Affairs

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To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Arkansas State Capitol and Historical Monument Protection Act

1. Does this proposed, amended, or repealed rule have a financial impact? Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes ☒ No ☐

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;

- b) The reason for adoption of the more costly rule;

- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and

- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.



4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$ 0.00

Total \$ 0.00

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total \$ 0.00

Total \$ 0.00

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

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6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?  
Yes ☐ No ☒

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.