



TENNESSEE HERITAGE PROTECTION ACT: FACT SHEET

An item-by-item synopsis as each item appears in the Act.
(Current Through 2018 Amendments)

1. The Act defines the following terms (*refer to Act for full definitions*):
historic conflict, historic entity, historic event, historic figure, historic organization, memorial, and public property.
2. The Act states that:
“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. 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. The Act defines the authority of any public entity that is responsible for maintaining and preserving a memorial covered by THPA and allows for the **temporary** removal or concealment of a memorial for a 45-day period.

The Act provides for **exceptions to the law**—for permanent removal or temporary removal for longer than 45 days, by the following procedures:

- A public entity exercising control of a memorial may **petition the commission for waiver** prior to undertaking any action or transaction.
- A written petition for waiver must state the rationale for the waiver. The request must be supported by one 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 must identify persons or groups that may have an interest in receiving notice of the petition.
- The petition for waiver must be filed with the commission, along with proof of published public notice in at least one general circulation newspaper serving the memorial area and one in Davidson County.

4. The Act provides for the following hearing procedures:

- An **initial hearing** before the commission must be scheduled at any **regular** commission meeting **no sooner than 60 days** after a petition is filed. At this hearing the commission will determine which stakeholders are to be given written notice by the public entity. If an amendment to the petition is filed, the public entity is required to provide supplemental notice, which follows the same requirements as the original petition.
- A **final hearing** must be scheduled at any **regular** commission meeting **no sooner than 180 days** after a petition is filed.

5. The Act provides for public participation:

- An interested entity shall be given an opportunity to comment regarding a petition for waiver at any hearing on a petition.
- An interested entity may file a memorandum, report, study, letter, or other document related to the petition for consideration by the commission.
- An interested entity may **intervene** in any petition for waiver by filing written notice with the commission not less than 45 days prior to the final hearing. Upon filing notice, **the interested entity shall be a party in all proceedings on the petition of waiver**, receive copies of all filings, and may present relevant testimony at any hearing on the petition. Only the interested entity may waive this status, once established.

6. All petition for waiver hearings must be recorded. Copies of the record and all exhibits must be available to any interested entity at the cost of the public entity seeking the waiver.

7. The Act states 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."
- The commission may **grant a petition for waiver, in whole or in part, by a two-thirds vote (20 or more) of the entire membership**, by roll call vote. The commission may include conditions and instructions to ensure that a memorial is preserved and remains publicly accessible to the greatest extent possible. Within 30 days from the final hearing, the determination of the commission shall be reduced to writing and state the grounds for the commission's determination. **The effective date of the determination shall not be less than 120 days after notice of the commission's determination is posted on the THC website.** Copies of the final determination must be sent to the public entity seeking the waiver and to interested entities who testified at the final hearing.

8. Entities with standing that are aggrieved by the final determinations:

- May file **petitions for review in the chancery court** of Davidson County or, alternatively, in the county where the memorial is located. A petition for review must be filed **within 60 days after notice of the commission's determination is posted on the THC website**. The court shall conduct a de novo review on the record of the issues, without presumption that the findings of the commission are correct. Additional evidence may be introduced and considered by the court.
- May request a **restraining order** to preserve the memorial pending a final ruling. No bond or other security shall be required for any restraining order or injunctive relief issued.
- The Act describes memorials that fall under THPA laws as:
 1. Memorials in existence prior to January 1, 1970.
Memorials lawfully created/dedicated on or after January 1, 1970.
 2. **Exempted memorials** are those located on public property under the control or, or acquired by, the Department of Transportation (TDOT) which may interfere with the construction, maintenance, or operation of the public transportation system.
 3. **Exempted memorials** are those that have reached the end of their useful lives and are lawfully approved for demolition by the state building commission.
 4. **Exempted memorials** are those under the control of an accredited museum when housed within the museum property or storage facilities, located on public property, or exhibited on public property as part of a temporary exhibition, display, or loan.
 5. **Exempted memorials** are those under the control of a public library or public archive when housed within the archive property, storage facility, located on public property, or exhibited as part of a temporary exhibition, display, or loan.

In the event of **violations** against THPA laws, the Act states that:

1. The commission is authorized to receive and consider complaints alleging violations of the Tennessee Heritage Protection Act.
2. Complaints may be filed by any entity, group, or individual. They must be submitted in writing within 120 days of the alleged violation.
3. **A hearing for the complaint must be set within 120 days after the complaint is filed.** Multiple complaints alleging the same violation must be joined. The complainant and public entity must be given notice of the hearing at least 30 days prior to the date. The complainant and the public entity may present evidence at the hearing. The commission may determine that a violation has occurred by a majority vote (15 or more) of the entire membership of the commission. The complaint will

be dismissed if the commission does not determine that a violation has occurred. Once acted upon, no complaint alleging 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 must transmit a copy of a violation determination to the public entity and to the Department of Economic and Community Development (DECD).
 5. Violations of any part of THPA preclude the guilty public entity from acquiring grant contracts administered by THC and DECD for 5 years.
- At its discretion, the commission may assist any public entity or historic organization with preservation of a memorial through consultation, best practices, or other available resources.

6. In lieu of a waiver, a historic organization may petition the commission to transfer ownership of and/or relocate a memorial to that 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 and/or relocation and identify who will be responsible for the costs. A memorial may be relocated to an accessible and suitable location as determined by the commission.

7. The Uniform Administrative Procedures Act applies to the Tennessee Heritage Protection Act.