

The Senate Committee on State and Local Governmental Operations - General offered the following substitute to SB 301:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 3 of Title 50 of the Official Code of Georgia Annotated, relating to state  
2 flag, seal, and other symbols, so as to revise provisions for the protection of government  
3 statues, monuments, plaques, banners, and other commemorative symbols; to provide for  
4 construction; to provide for a waiver of sovereign and official immunity in certain cases; to  
5 provide for severability; to provide for related matters; to repeal conflicting laws; and for  
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 3 of Title 50 of the Official Code of Georgia Annotated, relating to state flag, seal,  
10 and other symbols, is amended by revising subsections (b) and (c) of Code Section 50-3-1,  
11 relating to description of state flag, militia to carry flag, defacing public monuments, and  
12 relocation of monuments, and adding new subsections to read as follows:

13 "(b)(1) As used in this subsection, the term:

14 (A) 'Agency' means any state or local government entity, including any department,  
15 agency, bureau, authority, board, educational institution, commission, or  
16 instrumentality or subdivision thereof, and specifically including a local board of

17 education, the Board of Regents of the University System of Georgia, and any  
18 institution of the University System of Georgia.

19 (B) 'Monument' means a monument, plaque, statue, marker, flag, banner, structure  
20 name, display, or memorial constructed and located with the intent of being  
21 permanently displayed and perpetually maintained that is:

22 (i) Dedicated to a historical entity or historically significant military, religious, civil,  
23 civil rights, political, social, or cultural events or series of events; or

24 (ii) Dedicated to, honors, or recounts the military service of any past or present  
25 military personnel of this state; the United States of America or the several states  
26 thereof; or the Confederate States of America or the several states thereof.

27 (C) 'Officer' means an officer, official, body, employee, contractor, representative, or  
28 agent of any agency, whether appointed or elected.

29 (2) It shall be unlawful for any person, firm, corporation, officer, agency, or other entity  
30 to mutilate, deface, defile, damage, destroy, lose, or abuse contemptuously any publicly  
31 or privately owned monument located, erected, constructed, created, or maintained on  
32 real property owned by an agency or the State of Georgia. No person, firm, corporation,  
33 officer, or agency, or other entity shall remove or conceal from display any such  
34 monument for the purpose of preventing the visible display of the same. A ~~violation of~~  
35 ~~this paragraph shall constitute~~ person that violates this Code section shall be guilty of a  
36 misdemeanor.

37 (3) No publicly or privately owned monument erected, constructed, created, or  
38 maintained on the public property of this state or its agencies, departments, authorities,  
39 or instrumentalities or on real property owned by an agency or the State of Georgia shall  
40 be relocated, removed, concealed, obscured, or altered in any fashion by any officer or  
41 agency; provided, however, that appropriate measures for the preservation, ~~protection,~~  
42 ~~and interpretation~~ and protection in place of such monument or memorial shall not be  
43 prohibited.

44 (4) Any person, firm, corporation, officer, agency, or other entity that ~~damages, destroys,~~  
45 ~~or loses a monument or that takes or removes a monument without replacing it~~ violates  
46 this Code section shall be liable for treble the amount of the full cost of repair or  
47 replacement of such monument and may be subject to exemplary damages ~~unless such~~  
48 ~~person or entity was authorized to take such action by the public entity owning such~~  
49 ~~monument.~~ In addition to treble the cost of repair or replacement and possible exemplary  
50 damages, the person, firm, corporation, officer, agency, or other entity shall also be liable  
51 for the attorney's fees and court costs expended by the ~~public entity owner of the~~  
52 ~~monument or person, group, or legal entity~~ claimant under this Code section in any action  
53 or proceeding required to establish liability and collect amounts owed. Should a ~~public~~  
54 ~~entity owner of the monument or person, group, or other legal entity~~ prevail in any action  
55 claimant under this Code section prevail in any action, such prevailing party claimant  
56 shall use the moneys collected from the party mutilating, defacing, defiling, damaging,  
57 destroying, losing, abusing, or relocating such monument to timely pay for the cost of ~~or~~  
58 repair or ~~placement~~ restoration of the monument ~~upon moneys being collected from the~~  
59 ~~party damaging, destroying, or losing such monument~~ to its former condition prior to  
60 being mutilated, defaced, defiled, damaged, destroyed, lost, abused, or relocated.

61 (5) ~~A public entity owning a monument or any~~ Any interested person, group, or legal  
62 entity, without regard to ownership of the monument or a specialized and personalized  
63 injury, shall have standing and a right to bring a cause of action for any conduct  
64 prohibited by this Code section ~~for damages as permitted by this Code section.~~ Such  
65 claimant may bring an action individually or in a representative capacity against the  
66 person, firm, corporation, officer, agency, or other entity that violates this Code section  
67 to seek injunctive relief and to recover attorney's fees, expenses of litigation, and general  
68 and exemplary damages sustained as a result of such unlawful actions. Such action shall  
69 be brought in the superior court of the county in which the monument was located.

70 (6) Except as provided in this paragraph, it shall be unlawful for any person, firm,  
71 corporation, officer, agency, or other entity acting without authority to mutilate, deface,  
72 defile, abuse contemptuously, relocate, remove, conceal, damage, destroy, alter, or  
73 obscure any privately owned monument located on privately owned property. Any  
74 person or entity that suffers injury or damages as a result of a violation of this paragraph  
75 may bring an action individually or in a representative capacity against the person or  
76 persons, firm, corporation, officer, agency, or other entity committing such violations to  
77 seek to recover general and exemplary damages sustained as a result of ~~such person's or~~  
78 persons' unlawful actions of any such defendant. Any person, firm, corporation, officer,  
79 agency, or other entity that damages, destroys, or loses a monument or that takes or  
80 removes a privately owned monument shall be liable for treble the amount of the full cost  
81 of repair or replacement of such monument and may be subject to exemplary damages.  
82 In addition to treble the cost of repair or replacement and possible exemplary damages,  
83 such person, firm, corporation, officer, agency, or other entity shall also be liable for the  
84 attorney's fees and court costs expended by the claimant under this Code section in any  
85 action or proceeding required to establish liability and collect amounts owed. This  
86 paragraph shall not apply to ~~an~~ a private owner of real property ~~storing~~ regarding such  
87 owner's privately owned monuments.

88 (7) Nothing in this Code section shall prevent an agency from relocating a monument  
89 when relocation is necessary for the construction, expansion, or alteration of edifices,  
90 buildings, roads, streets, highways, or other transportation construction projects. Any  
91 monument relocated for such purposes shall be relocated to a site of similar prominence,  
92 honor, visibility, and access within the same county or municipality in which the  
93 monument was originally located. A monument shall not be relocated to a museum,  
94 cemetery, or mausoleum unless it was originally placed at such location.

95 (8) In all cases when there has been an alleged violation of this Code section, the  
96 Attorney General or the district attorney of the circuit in which the monument was

97 located may represent the interests of the monument owner, the interests of others with  
98 interest in the monument, and the interests of this state as parens patriae in all legal  
99 matters pertaining to the enforcement of this Code section. The Attorney General or the  
100 district attorney may bring actions, and, insofar as an action of this nature may be deemed  
101 an action against the state and its agencies, the state expressly gives its consent thereto.

102 (9) Conduct prohibited by this Code section shall be enjoined by the appropriate superior  
103 court upon proper application.

104 (10) No claimant shall be required to show a particularized or personal concrete injury  
105 to make a claim for damages because the General Assembly of the State of Georgia finds  
106 the enforcement of this Code section to be a public right to have all governmental entities  
107 abide by and adhere to state law.

108 (11) In the event that an agency desires to remove a monument from public display or  
109 relocate such monument, the agency shall give 90 days' public notice in the legal organ  
110 of the county in which such monument is located of such intent and, if the agency desires  
111 to remove the monument from public display, shall solicit in such public notice any third  
112 party that would be interested in receiving such monument for public display. No action  
113 with regard to removing or relocating such monument shall be taken by the agency until  
114 the expiration of the 90 day period, provided that such period shall be tolled during the  
115 pendency of any litigation requesting an injunction, declaratory relief, or declaratory  
116 judgment to prevent such agency from removing such monument from public display or  
117 relocating such monument or requesting other sanctions under this Code section until a  
118 decision on the merits of such litigation is final. At the conclusion of the 90 day period,  
119 the agency shall either safely store and maintain such monument or, if a third party so  
120 requests, transfer the monument to such third party, provided that such third party agrees  
121 to publicly display the monument at either a location owned by such third party or a  
122 location owned by a public agency that such third party has permission to use for such  
123 display. In the event that multiple third parties are interested in receiving such monument

124 for public display, preference shall be given to the third party which is most closely  
125 identified with the purposes and goals of the organization originally placing the  
126 monument and the agency may create a process to determine which of the third parties  
127 will receive the monument. Additionally, an interested third party that is willing to  
128 publicly display such monument in a location within the jurisdiction where the monument  
129 is presently located shall be the preferred recipient. The costs of moving and placing the  
130 monument in a new location shall be shared equally between the agency and the third  
131 party.

132 (c) Any other provision of law notwithstanding, the memorial to the heroes of the  
133 Confederate States of America graven upon the face of Stone Mountain shall never be  
134 altered, removed, concealed, or obscured in any fashion and shall be preserved and  
135 protected for all time as a tribute to the bravery and heroism of the citizens of this state who  
136 suffered and died in their cause.

137 (d) Nothing in this Code section shall be construed so as to interfere with the rights of any  
138 private monument owner. For the purposes of protection pursuant to this Code section, any  
139 monument found to be privately owned shall be treated as publicly owned. No transfer of  
140 title of such a monument is conveyed by this Code section.

141 (e) The Department of Community Affairs shall establish a registry of all monuments in  
142 this state located on public property. Such registry shall contain, at a minimum, a  
143 description of each monument, the location of such monument, and a statement as to  
144 whether the monument itself is privately or publicly owned and the name of the owner.  
145 This shall include monuments that are in storage as well as monuments on public display.  
146 Not later than December 31 of the year following the year in which this subsection  
147 becomes effective, each agency shall send to the Department of Community Affairs a  
148 comprehensive list of all monuments within the jurisdiction of such agency containing the  
149 information set forth in this Code section. Thereafter, any time a monument is relocated  
150 to a place that is different from the location on the monument registry maintained by the

151 Department of Community Affairs the agency within whose jurisdiction such monument  
152 is located shall immediately notify the Department of Community Affairs of the new  
153 location of the monument.

154 (f) The General Assembly of the State of Georgia explicitly hereby waives sovereign  
155 immunity for any and all civil actions, causes of action, and claims that may be asserted  
156 against the State of Georgia or its political subdivisions under this Code section and it shall  
157 not be raised as a defense.

158 (g) The General Assembly of the State of Georgia explicitly hereby waives qualified  
159 immunity for any public officer or individual who violates any provision of this Code  
160 section."

161

## **SECTION 2.**

162 All laws and parts of laws in conflict with this Act are repealed.