

The House Committee on Governmental Affairs offers the following substitute to HB 467:

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 severability; to provide for related matters; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 3 of Title 50 of the Official Code of Georgia Annotated, relating to state flag, seal,
9 and other symbols, is amended by revising subsection (b) of Code Section 50-3-1, relating
10 to description of state flag, militia to carry flag, monument offenses, penalties, and cause of
11 action and adding new subsections to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(7) ~~Nothing~~ Other than the provisions of paragraph (11) of this subsection, nothing in this Code section shall prevent an agency from relocating a monument when relocation is necessary for the construction, expansion, or alteration of edifices, buildings, roads, streets, highways, or other transportation construction projects. Any monument relocated for such purposes shall be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality in which the monument was originally located. A monument shall not be relocated to a museum, cemetery, or mausoleum unless it was originally placed at such location.

(8) In all cases when there has been an alleged violation of this Code section, the Attorney General or the district attorney of the county in which the monument was located may represent the interests of the monument owner, the interests of others with interest in the monument, and the interests of the state as parens patriae in all legal matters pertaining to the enforcement of this Code section. The Attorney General or the district attorney may bring actions, and, insofar as an action of this nature may be deemed an action against the state and its agencies, the state expressly gives its consent thereto.

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

(10) No claimant shall be required to show a particularized or personal concrete injury to make a claim for damages.

(11) In the event that an agency desires to remove a monument from public display or relocate such monument, the agency shall give 90 days' public notice in the legal organ of the county in which such monument is located of such intent and, if the agency desires to remove the monument from public display, shall solicit in such public notice any third party that would be interested in receiving such monument for public display. No action with regard to removing or relocating such monument shall be taken by the agency until the expiration of the 90 day period, provided that such period shall be tolled during the pendency of any litigation requesting an injunction to prevent such agency from removing such monument from public display or relocating such monument or requesting other sanctions under this Code section until a decision on the merits of such litigation is final. Except as may be otherwise ordered by a court of competent jurisdiction, at the conclusion of the 90 day period, the agency shall either safely store and maintain such monument or, if a third party so requests, transfer the monument to such third party, provided that such third party agrees to publicly display the monument at either a location owned by such third party or a location owned by a public agency that such third party has permission to use for such display. In the event that multiple third parties are

interested in receiving such monument for public display, preference shall be given to the third party that is willing to publicly display such monument in a location within the jurisdiction where the monument is located. The agency shall be responsible for all costs of moving and placing the monument in a new location."

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

(e) The Department of Community Affairs shall establish a registry of all monuments in this state located on public property. Such registry shall contain, at a minimum, a description of each monument, the location of such monument, and a statement as to whether the monument itself is privately or publicly owned and the name of the owner. Such registry shall include monuments that are in storage as well as monuments on public display. No later than December 31, 2025, each agency shall send to the Department of Community Affairs a comprehensive list of all monuments within the jurisdiction of such agency containing the information set forth in this Code section. Thereafter, any time a monument is relocated to a place that is different from the location on the monument registry maintained by the Department of Community Affairs the agency within whose jurisdiction such monument is located shall immediately notify the Department of Community Affairs of the new location of the monument."

SECTION 2.

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