

The House Committee on Governmental Affairs offers the following substitute to SB 175:

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 provide for an effective date; to
6 repeal conflicting laws; and for 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, monument offenses, penalties, and
12 causes of action, 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

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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 shall recover attorney's fees, expenses of litigation, and
68 general and exemplary damages sustained as a result of such unlawful acts upon
69 prevailing in the action. Such action shall be brought in the superior court of the county
70 in which the monument was located.

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

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

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

98 located may represent the interests of the monument owner, the interests of others with
99 interest in the monument, and the interests of this state as parens patriae in all legal
100 matters pertaining to the enforcement of this Code section. The Attorney General or the
101 district attorney may bring actions, and, insofar as an action of this nature may be deemed
102 an action against the state and its agencies, the state expressly gives its consent thereto.
103 (9) Conduct prohibited by this Code section shall be enjoined by the appropriate superior
104 court upon proper application.
105 (10) No claimant shall be required to show a particularized or personal concrete injury
106 to make a claim for damages because the General Assembly of the State of Georgia finds
107 the enforcement of this Code section to be a public right to have all governmental entities
108 abide by and adhere to state law.
109 (11) In any case where an agency desires to remove a monument from public display or
110 relocate such monument, where such removal or relocation is explicitly authorized by
111 state law and has not been foreclosed by litigation which held that the monument shall
112 not be removed from public display or relocated, the agency shall give 90 days' public
113 notice in the legal organ of the county in which such monument is located of such intent
114 and, if the agency desires to remove the monument from public display, shall solicit in
115 such public notice any third party that would be interested in receiving such monument
116 for public display. No action with regard to removing or relocating such monument shall
117 be taken by the agency until the expiration of the 90 day period, provided that such period
118 shall be tolled during the pendency of any litigation requesting an injunction, declaratory
119 relief, or declaratory judgment to prevent such agency from removing such monument
120 from public display or relocating such monument or requesting other sanctions under this
121 Code section until a decision on the merits of such litigation is final. At the conclusion
122 of the 90 day period, the agency shall either safely store and maintain such monument or,
123 if a third party so requests, transfer the monument to such third party, provided that such
124 third party agrees to publicly display the monument at either a location owned by such

125 third party or a location owned by a public agency that such third party has permission
126 to use for such display. In the event that multiple third parties are interested in receiving
127 such monument for public display, preference shall be given to the third party which is
128 most closely identified with the purposes and goals of the organization originally placing
129 the monument and the agency may create a process to determine which of the third
130 parties will receive the monument. Additionally, an interested third party that is willing
131 to publicly display such monument in a location within the jurisdiction where the
132 monument is presently located shall be the preferred recipient. The costs of moving and
133 placing the monument in a new location shall be paid for by the agency.

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

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

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

152 to a place that is different from the location on the monument registry maintained by the
153 Department of Community Affairs the agency within whose jurisdiction such monument
154 is located shall immediately notify the Department of Community Affairs of the new
155 location of the monument.

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

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

163 **SECTION 2.**

164 This Act shall become effective upon its approval by the Governor or upon its becoming law
165 without such approval.

166 **SECTION 3.**

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