

1 HB349
2 183275-1
3 By Representatives Butler, Nordgren, Hanes, Whorton (R),
4 Williams (JW), Rich, Wood, Ledbetter, Farley, South,
5 Standridge, Fridy, Weaver, Williams (P), Shedd, Whorton (I),
6 Polizos and Moore (B)
7 RFD: State Government
8 First Read: 02-MAR-17

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8 SYNOPSIS: This bill would create the Alabama Memorial
9 Preservation Act of 2017.

10 This bill would prohibit the relocation,
11 removal, alteration, renaming, or other disturbance
12 of monuments located on public property.

13 This bill would prohibit any person from
14 preventing the governmental entity responsible for
15 maintaining the monuments from taking proper
16 measures to protect, preserve, care for, repair, or
17 restore the monuments.

18 This bill would restrict the renaming of a
19 school, street, bridge, building, park, preserve,
20 or reserve which is located on public property.

21 This bill would create the Alabama Committee
22 on Memorial Preservation and would provide for the
23 membership of the committee and the duties of the
24 committee, and would authorize the committee to
25 grant waivers and to issue orders for the
26 restoration of monuments removed without
27 authorization.

1 This bill would also exempt certain art and
2 artifacts, the Department of Transportation, local
3 governments, universities, and utilities under
4 certain limited circumstances.

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6 A BILL
7 TO BE ENTITLED
8 AN ACT

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10 To create the Alabama Memorial Preservation Act of
11 2017; to prohibit the relocation, removal, alteration, or
12 renaming of monuments located on public property; to prohibit
13 any person from preventing the governmental entity responsible
14 for maintaining the monuments from taking proper measures to
15 protect, preserve, care for, repair, or restore the monuments;
16 to restrict the renaming of a school, street, bridge,
17 building, park, preserve, or reserve which is located on
18 public property; to create the Alabama Committee on Memorial
19 Preservation; to provide for the membership of the committee;
20 to provide for the duties of the committee; to authorize the
21 committee to grant waivers and to issue orders; and to exempt
22 certain art and artifacts, the Department of Transportation,
23 local governments, universities, and utilities under certain
24 limited circumstances.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. This act shall be known and may be cited
27 as the Alabama Memorial Preservation Act of 2017.

1 Section 2. For the purposes of this act, the
2 following terms shall have the following meanings:

3 (1) COMMITTEE. The Alabama Committee on Memorial
4 Preservation created by this act.

5 (2) CONTROLLING ENTITY. The governmental entity
6 responsible for a monument or for the public property named
7 for memorial purposes as provided in subsection (b) of Section
8 3.

9 (3) MONUMENT. An above-ground statue or marker that
10 serves as a permanent memorial to an event, a person, a group,
11 a movement, or military service that is part of the history of
12 the state. For the purposes of this act, monuments do not
13 include signage bearing historical or interpretive text,
14 commonly known as a "historical marker" or "wayside exhibit,"
15 or portraits or plaques installed by temporary means.

16 (4) PUBLIC PROPERTY. All property owned by the State
17 of Alabama, any county or municipal government in the state,
18 or any other entity created by act of the Legislature to
19 perform any public function.

20 Section 3. (a) No monument which is located on
21 public property may be relocated, removed, altered, or renamed
22 except as provided in Section 5.

23 (b) No school, street, bridge, building, park,
24 preserve, or reserve which is located on public property and
25 has been erected for, or named, or dedicated in honor or
26 memory of an event, a person, a group, a movement, or military

1 service and has held such status for more than 50 years may be
2 renamed, except as provided in Section 6.

3 Section 4. (a) There is created the Alabama
4 Committee on Memorial Preservation.

5 (b) The initial membership of the committee shall be
6 appointed no later than August 1, 2017. Thereafter, the
7 membership of the committee shall be appointed and reappointed
8 at the beginning of each legislative quadrennium. The
9 appointing authorities shall coordinate their appointments to
10 assure committee membership is inclusive and reflects the
11 racial, gender, geographic, urban/rural, and economic
12 diversity of the state. The membership shall include all of
13 the following:

14 (1) One member appointed by the Director of the
15 Alabama Department of Archives and History.

16 (2) One member appointed by the Executive Director
17 of the Alabama Historical Commission.

18 (3) One member appointed by the Chair of the Black
19 Heritage Council.

20 (4) One member appointed by the President of the
21 Alabama Historical Association.

22 (5) One member appointed by the President of the
23 Alabama Trust for Historic Preservation.

24 (6) Two members appointed by the Speaker of the
25 House of Representatives from the membership of the House of
26 Representatives.

1 (7) Two members appointed by the President Pro
2 Tempore of the Senate from the membership of the Senate.

3 (8) One member who is a county commissioner
4 appointed by the Governor.

5 (9) One member who is a mayor or city councilor
6 appointed by the Governor.

7 (c) At the organizational meeting of the committee,
8 the membership of the committee shall select a chair and a
9 vice chair. The chair of the committee may create advisory
10 subcommittees and appoint members thereto, which may include
11 members of the committee, representatives from governmental
12 agencies, and members of the public with interest and
13 expertise in the objectives of the committee. The committee
14 shall create no more than two active advisory subcommittees at
15 any given time unless the committee votes unanimously for
16 additional subcommittees.

17 (d) The committee shall thereafter meet at the call
18 of the chair or any majority of the members thereof; provided,
19 that the committee shall meet at least once each quadrennium.
20 The committee shall have a continuing existence and may meet,
21 act, and conduct its business at any place within this state
22 during the sessions of the Legislature or any recess thereof,
23 and in the interim period between sessions. All notices and
24 meetings of the committee shall be conducted in accordance
25 with the Alabama Open Meetings Act, Chapter 25A, Title 36,
26 Code of Alabama 1975. A majority of the duly appointed members
27 of the committee shall constitute a quorum.

1 (e) The committee shall perform all duties
2 prescribed by this act.

3 (f) Each legislative member of the committee or any
4 subcommittee, if created, shall be entitled to the legislative
5 compensation, per diem, and travel as provided in Amendment
6 871 to the Constitution of Alabama of 1901, now appearing as
7 Section 49.01 of the Official Recompilation of the
8 Constitution of Alabama of 1901, as amended.

9 (g) The Alabama Department of Archives and History
10 shall be custodian of the records of the committee.

11 Section 5. (a) Any controlling entity of public
12 property on which a monument is located may petition the
13 committee for a waiver from subsection (a) of Section 3
14 through an application including, at a minimum, all of the
15 following:

16 (1) A resolution adopted by the controlling entity
17 seeking a waiver for the relocation, removal, alteration, or
18 renaming of the monument, and stating the reasons therefor.

19 (2) Written documentation, to the extent available
20 from government records, newspapers, and other published and
21 unpublished sources, of the monument's creation or dedication,
22 including, if known, the person or groups advocating for the
23 monument, their stated intent, and any subsequent alteration
24 or renaming of the monument.

25 (3) Written comments received, if any, by the
26 controlling entity from members of the general public and
27 members of any heritage, historical, genealogical, or

1 preservation organizations with interest in the controlling
2 entity's waiver request.

3 (b) If the committee grants a waiver, it may provide
4 reasonable conditions and instructions to the controlling
5 entity to ensure that the monument is preserved to the
6 greatest extent possible.

7 (c) In the event there is a need for emergency
8 repairs or construction at the monument or on adjacent
9 property, a controlling entity may temporarily relocate or
10 otherwise protect the monument without seeking a waiver under
11 the process set out in this section; provided the monument
12 shall be returned to its prior location and condition as soon
13 as safely and reasonably possible and no later than 120 days
14 from the completion of repair or construction.

15 (d) No person may prevent the controlling entity
16 having responsibility for maintaining any of the monuments
17 described in subsection (a) of Section 3 from taking proper
18 and appropriate measures, and exercising proper and
19 appropriate means, for the protection, preservation, care,
20 repair, or restoration of those monuments.

21 Section 6. (a) Any controlling entity exercising
22 control of public property on which a school, street, bridge,
23 building, park, preserve, or reserve is located may petition
24 the committee for a waiver from subsection (b) of Section 3
25 through an application including, at a minimum, all of the
26 following:

1 (1) A resolution adopted by the controlling entity
2 seeking a waiver for the renaming of the school, street,
3 bridge, building, park, preserve, or reserve, and stating the
4 reasons therefor.

5 (2) Written documentation, to the extent available
6 from government records, newspapers, and other published and
7 unpublished sources, of the circumstances of the prior naming
8 or dedication of the school, street, bridge, building, park,
9 preserve, or reserve.

10 (3) Written comments received, if any, by the
11 controlling entity from members of the general public and
12 members of any heritage, historical, genealogical, or
13 preservation organizations with interest in the controlling
14 entity's waiver request.

15 Section 7. (a) All applications for waiver submitted
16 pursuant to this act shall be filed with the committee in care
17 of the director of the Alabama Department of Archives and
18 History. The committee shall have 90 days from the date the
19 application is received in the office of the director to
20 approve or deny the application by vote of the committee after
21 a hearing conducted pursuant to the Alabama Administrative
22 Procedure Act. The final decision shall be in writing and
23 delivered to the controlling entity by first class mail. If
24 the committee does not approve or deny the waiver application
25 within 90 days of receipt of the application by the director,
26 the waiver shall be deemed granted.

1 (b) If the committee denies the application for
2 waiver, the controlling entity may file an appeal to the
3 Circuit Court of Montgomery County for a de novo review of the
4 application for waiver. The appeal shall be filed within 30
5 days of receipt of the written notice of denial.

6 Section 8. (a) If the committee determines after a
7 hearing conducted pursuant to the Alabama Administrative
8 Procedures Act that a controlling entity has removed a
9 protected monument from public property without first
10 obtaining a waiver from the committee pursuant to this act or
11 from the Circuit Court of Montgomery County upon appeal, the
12 committee may order the controlling entity to restore or
13 replace the monument in like or similar fashion to the
14 original. Notice of the order, setting out with
15 particularities the grounds for issuance of the order, shall
16 be delivered to the controlling entity by certified mail,
17 return receipt requested.

18 (b) The controlling entity may file an appeal to the
19 Circuit Court of Montgomery County for a de novo review of the
20 order to restore or replace the monument. The appeal shall be
21 filed within 30 days of receipt of the written notice of the
22 order, and restoration or replacement of the monument shall be
23 stayed pending a decision by the circuit court.

24 Section 9. This act does not apply to any of the
25 following:

26 (1) Art and artifacts in the collections of museums,
27 archives, and libraries.

1 (2) Monuments described in Section 3 that are
2 located on public property under the control of, or acquired
3 by, the State Department of Transportation, which may
4 interfere with the construction, maintenance, or operation of
5 any public transportation system or any roads or bridges under
6 its control. The department shall strive to ensure that any
7 such monuments are preserved to the greatest extent possible.

8 (3) Monuments described in Section 3 that are
9 located on public property under the control of, or acquired
10 by, a county or municipal body or a university, which may
11 interfere with the construction, maintenance, or operation of
12 the public transportation system or any roads or bridges under
13 its control. The governing body of the county, municipality,
14 or university shall strive to ensure that any such monuments
15 are preserved to the greatest extent possible.

16 (4) Monuments described in Section 3 that are
17 located on public property operated or used by a utility,
18 which may interfere with providing utility service. The
19 utility shall strive to ensure that any monuments are
20 preserved to the greatest extent possible.

21 Section 10. The committee shall promulgate rules
22 necessary to implement and administer this act. The rules
23 shall be adopted pursuant to the Alabama Administrative
24 Procedures Act.

25 Section 11. No controlling entity shall be found in
26 violation of this act until the committee is fully constituted
27 and the process for waiver application is fully in place.

1 Section 12. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.