

1 HB246  
2 216115-1  
3 By Representatives Ball, Givan, Hall, Coleman, Bracy, Jones  
4 (S), Daniels, Moore (M), Rogers, Morris, Boyd, Gray, Hollis,  
5 Alexander, Warren, Lawrence, Hassell, Drummond, Chestnut and  
6 Rafferty  
7 RFD: State Government  
8 First Read: 02-FEB-22

8 SYNOPSIS: This bill would substantially revise the  
9 Alabama Memorial Preservation Act of 2017, to  
10 authorize a county or municipality to remove or  
11 relocate any monument that has been located on  
12 public property, under the jurisdiction of the  
13 county or municipality, for less than 50 years.

14 This bill would require the county or  
15 municipality to request a waiver from the Committee  
16 on Alabama Monument Protection before removing or  
17 relocating any monument that has been situated on  
18 public property for 50 or more years.

19 This bill would remove architecturally  
20 significant buildings, memorial buildings, memorial  
21 schools, and memorial streets from application of  
22 the act.

23 This bill would also provide further for  
24 duties of the Director and Department of Archives  
25 and History, the waiver process, and the rulemaking  
26 authority of the committee.

1 A BILL  
2 TO BE ENTITLED  
3 AN ACT  
4

5 Relating to the Alabama Memorial Preservation Act of  
6 2017, to amend Sections 41-9-231, 41-9-232, 41-9-233,  
7 41-9-234, 41-9-235, 41-9-236, and 41-9-237, Code of Alabama  
8 1975, to authorize a county or municipality to remove any  
9 monument located on public property for less than 50 years; to  
10 require a waiver granted by the Committee on Alabama Monument  
11 Protection before removing or relocating any monument that has  
12 been so situated for 50 or more years; to remove  
13 architecturally significant buildings, memorial buildings,  
14 memorial schools, and memorial streets from application of the  
15 act; to provide further for the duties of the Director and  
16 Department of Archives and History; to provide further for the  
17 waiver process; to provide further for the rulemaking  
18 authority of the committee; and to repeal Section 41-9-230,  
19 providing for the name of the act.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 41-9-231, 41-9-232, 41-9-233,  
22 41-9-234, 41-9-235, 41-9-236, and 41-9-237 of the Code of  
23 Alabama 1975, are amended to read as follows:

24 "§41-9-231.

25 "For the purposes of this article, the following  
26 terms shall have the following meanings:

1           ~~"(1) ARCHITECTURALLY SIGNIFICANT BUILDING. A~~  
2 ~~building located on public property that by its very nature,~~  
3 ~~inherent design, or structure constitutes a monument.~~

4           ~~"(2) (1) COMMITTEE. The Committee on Alabama Monument~~  
5 ~~Protection created by this article.~~

6           ~~"(3) MEMORIAL BUILDING. A building, structure, park,~~  
7 ~~or other institution, other than a Memorial School, that is~~  
8 ~~located on public property and has been erected for, or named~~  
9 ~~or dedicated in honor of, an event, a person, a group, a~~  
10 ~~movement, or military service.~~

11           ~~"(4) MEMORIAL SCHOOL. A K-12 or two-year~~  
12 ~~postsecondary institution or facility that is located on~~  
13 ~~public property and has been erected for, or named or~~  
14 ~~dedicated in honor of, an event, a person, a group, a~~  
15 ~~movement, or military service.~~

16           ~~"(5) MEMORIAL STREET. A street that is located on~~  
17 ~~public property and has been constructed for, or named or~~  
18 ~~dedicated in honor of, an event, a person, a group, a~~  
19 ~~movement, or military service.~~

20           ~~"(6) (2) MONUMENT. A statue, portrait, or marker~~  
21 ~~intended at the time of dedication to be a permanent memorial~~  
22 ~~to an event, a person, a group, a movement, or military~~  
23 ~~service that is part of the history of the people or geography~~  
24 ~~now comprising the State of Alabama. The term does not include~~  
25 ~~signage bearing historical or interpretive text, commonly~~  
26 ~~known as a historical marker or wayside exhibit, or portraits~~

1 or plaques installed by temporary means and not intended to be  
2 permanent at the time of installation.

3 ~~"(7)(3)~~ (3) PUBLIC PROPERTY. All property owned or  
4 leased by the State of Alabama; any county, or municipal, ~~or~~  
5 ~~metropolitan~~ government in the state; or any other entity  
6 created by act of the Legislature to perform any public  
7 function.

8 "§41-9-232.

9 ~~"(a) No architecturally significant building,~~  
10 ~~memorial building, memorial street, or monument which is~~  
11 ~~located on public property and has been so situated for 40~~ 50  
12 ~~or more years may be relocated, or removed, altered, renamed,~~  
13 ~~or otherwise disturbed~~ except as provided in Section 41-9-235.

14 ~~"(b) No architecturally significant building,~~  
15 ~~memorial building, memorial street, or monument which is~~  
16 ~~located on public property and has been so situated for at~~  
17 ~~least 20 years, and less than 40 years, may be relocated,~~  
18 ~~removed, altered, renamed, or otherwise disturbed except as~~  
19 ~~provided in Section 41-9-235.~~

20 ~~"(c) No memorial school which is located on public~~  
21 ~~property and has been so situated for 20 or more years may be~~  
22 ~~renamed except as provided in Section 41-9-235.~~

23 "§41-9-233.

24 "No person may prevent the governmental entity  
25 having responsibility for maintaining any ~~architecturally~~  
26 ~~significant building, memorial building, memorial school,~~  
27 ~~memorial street, or monument~~ from taking proper and

1 appropriate measures, and exercising proper and appropriate  
2 means, for the protection, preservation, care, repair, or  
3 restoration of those monuments, ~~streets, or buildings.~~

4 "§41-9-234.

5 "(a) There is created the Committee on Alabama  
6 Monument Protection.

7 "(b) The legislative members of the committee shall  
8 be appointed and reappointed at the beginning of each  
9 legislative quadrennium. The members of the committee  
10 appointed pursuant to subdivisions (3) to (5), inclusive,  
11 shall serve for terms of four years, with the exception of  
12 their initial terms, which shall be staggered as provided in  
13 subsection (d). Each term of a member appointed pursuant to  
14 subdivisions (3) to (5), inclusive, shall expire on September  
15 30. The appointing authorities shall coordinate their  
16 appointments to assure committee membership is inclusive and  
17 reflects the racial, gender, geographic, urban, rural, and  
18 economic diversity of the state. The membership of the  
19 committee shall include all of the following:

20 "(1) Two members of the House of Representatives,  
21 one from the majority party and one from the minority party,  
22 appointed by the Speaker of the House of Representatives.

23 "(2) Two members of the Senate, one from the  
24 majority party and one from the minority party, appointed by  
25 the President Pro Tempore of the Senate.

26 "(3) One member of the public, appointed by the  
27 Speaker of the House of Representatives.

1           "(4) One member of the public, appointed by the  
2 President Pro Tempore of the Senate.

3           "(5) Two members of the public, appointed by the  
4 Governor.

5           "(6) One actively serving county commissioner  
6 appointed by the Governor.

7           "(7) One actively serving mayor or member of the  
8 municipal governing body of a Class 1, Class 2, or Class 3  
9 municipality appointed by the Governor.

10          "(8) One actively serving mayor or member of the  
11 municipal governing body of a Class 4 to Class 8, inclusive,  
12 municipality appointed by the Governor.

13          "(c) To assist the appointing authorities in the  
14 process of appointing public members to the committee, each of  
15 the following entities may submit a list of names to the  
16 Speaker of the House of Representatives, President Pro Tempore  
17 of the Senate, and Governor for consideration for appointment:

18           "(1) The Department of Archives and History.

19           "(2) The Alabama Historical Commission.

20           "(3) The Alabama Historical Association.

21           "(4) The Alabama Trust for Historic Preservation.

22           "(5) The Black Heritage Council.

23          "(d) The initial members of the committee shall be  
24 appointed before September 1, 2017, and shall hold an  
25 organizational meeting of the committee before October 1,  
26 2017. At the organizational meeting of the committee, the  
27 membership of the committee shall select a chair and a vice

1 chair, who shall serve in that position for one year, and the  
2 public members appointed pursuant to subdivisions (3) to (5),  
3 inclusive, of subsection (b) shall draw lots to determine  
4 which one of those members shall serve an initial term of two  
5 years expiring on September 30, 2019, which two of those  
6 members shall serve an initial term of three years expiring on  
7 September 30, 2020, and which two of those members shall serve  
8 an initial term of four years expiring on September 30, 2021.  
9 The committee shall meet at least once each year, during the  
10 month of October, to select a chair and vice chair to serve  
11 for the following year. Thereafter, the committee shall meet  
12 at the call of the chair or any majority of the members of the  
13 committee. The committee shall have a continuing existence and  
14 may meet, act, and conduct committee business at any place  
15 within this state.

16 "(e) Initial committee members appointed pursuant to  
17 subdivisions (3) to (5), inclusive, of subsection (b), shall  
18 begin serving immediately upon appointment. Each committee  
19 member appointed pursuant to subdivisions (3) to (5),  
20 inclusive, of subsection (b), is subject to confirmation by  
21 the Senate during the legislative session in which the  
22 appointment is made or, if the appointment is made when the  
23 Legislature is not in session, during the next special or  
24 regular session. An appointee may serve in the position  
25 pending confirmation by the Senate. Failure of the Senate to  
26 act on the appointment during the session in which the  
27 appointment is made or, if the appointment is made while the



1 Legislature is not in session, during the next special or  
2 regular session, shall constitute confirmation by the Senate.  
3 Each member of the committee shall serve after the expiration  
4 of his or her term until his or her successor is appointed and  
5 may be appointed to more than one term.

6 "(f) The committee shall perform all duties  
7 prescribed by this article. The chair of the committee may  
8 create advisory subcommittees and appoint members thereto,  
9 which may include members of the committee, representatives  
10 from governmental agencies, and members of the public with  
11 interest and expertise in the objectives of the committee. The  
12 committee shall create no more than two active advisory  
13 subcommittees at any given time unless the committee votes  
14 unanimously for additional subcommittees.

15 "(g) The Director of the Alabama Department of  
16 Archives and History shall serve as an ex officio non-voting  
17 secretary to the committee, and shall provide staff assistance  
18 to the committee regarding the operations, meetings, and  
19 public notifications of the committee. The Department of  
20 Archives and History shall maintain the minutes and records of  
21 the committee.

22 "~~(g)~~ (h) Each legislative member of the committee or  
23 any subcommittee, if created, shall be entitled to the  
24 legislative compensation, per diem, and travel as provided in  
25 Amendment 871 to the Constitution of Alabama of 1901, now  
26 appearing as Section 49.01 of the Official Recompilation of  
27 the Constitution of Alabama of 1901, as amended.

1                   "§41-9-235.

2                   "(a) ~~(1)~~ Any entity exercising control of public  
3 property on which ~~an architecturally significant building,~~  
4 ~~memorial building, memorial school, memorial street, or a~~  
5 monument is located may petition the committee for a waiver  
6 from ~~subsection (b) or subsection (c)~~ of Section 41-9-232  
7 through an application including, at a minimum, all of the  
8 following:

9                   "~~a.~~(1) A resolution by the controlling entity  
10 seeking a waiver for the ~~renaming of a memorial school or for~~  
11 ~~the relocation, or~~ removal, alteration, renaming, or other  
12 ~~disturbance~~ of the ~~architecturally significant building,~~  
13 ~~memorial building, memorial street, or~~ monument and the  
14 reasons therefor.

15                   "~~b.~~(2) Written documentation of the origin of the  
16 ~~architecturally significant building, memorial building,~~  
17 ~~memorial school, memorial street, or~~ monument, the intent of  
18 the sponsoring entity at the time of dedication, and any  
19 subsequent ~~alteration, renaming, or other disturbance of the~~  
20 ~~architecturally significant building, memorial building,~~  
21 ~~memorial street, or~~ of the monument.

22                   "~~c.~~(3) Written commentary from any heritage,  
23 historical, genealogical, or preservation organizations with  
24 interest in the decision of the controlling entity, and from  
25 the general public.

26                   "~~d.~~ A written statement of any facts that were not  
27 known at the time of the origin of the architecturally

1 ~~significant building, memorial building, memorial school,~~  
2 ~~memorial street, or monument, but are known now, that the~~  
3 ~~committee should consider in granting the waiver. The absence~~  
4 ~~of such facts should serve as a presumption against the~~  
5 ~~granting of a waiver by the committee.~~

6 "(4) A written, fully executed agreement between the  
7 controlling entity and an eligible intended recipient entity  
8 stating that, if a waiver from Section 41-9-232 is granted,  
9 ownership and responsibility for the monument shall be  
10 transferred from the controlling entity to the recipient  
11 entity. The agreement shall also provide details on the  
12 anticipated date of transfer, details on the process for  
13 removal and reinstallation, details on the location and  
14 condition of the intended new placement, provisions for the  
15 cost of transfer and ongoing maintenance, and provisions for  
16 ongoing public access to the monument. An eligible recipient  
17 entity may include any of the following:

18 "a. A park, cemetery, museum, or similar space under  
19 the jurisdiction of the controlling entity.

20 "b. Any county or municipal government in the state.

21 "c. Any state agency.

22 "d. Any other entity created by act of the  
23 Legislature to perform a public function.

24 "e. Any private organization.

25 "(b) The committee shall evaluate the waiver request  
26 for the quality and completeness of the required documentation  
27 and for the reasonable sufficiency of details and provisions

1 in the agreement between the controlling entity and recipient  
2 entity as required by subdivision (a) (4). The committee may  
3 decline to grant a waiver if the waiver request is  
4 insufficient or incomplete, or may require revisions to the  
5 waiver request for further consideration.

6 ~~"(2)a.(c)~~ (c) If the committee grants a waiver, the  
7 committee may provide reasonable conditions and instructions  
8 to ensure that the ~~architecturally significant building,~~  
9 ~~memorial building, memorial school, memorial street, or~~  
10 ~~monument is restored or preserved to the greatest extent~~  
11 ~~possible. The committee, as a condition of granting a waiver,~~  
12 may require that the provided conditions and instructions be  
13 adopted as an amendment to the agreement between the  
14 controlling entity and the recipient entity.

15 ~~"b.(d)~~ (d) In the event there is a need for emergency  
16 repairs or construction at the site of or to the  
17 ~~architecturally significant building, memorial building,~~  
18 ~~memorial street, or monument or on adjacent property, the~~  
19 controlling entity may temporarily relocate or otherwise  
20 protect the ~~architecturally significant building, memorial~~  
21 ~~building, memorial street, or monument~~ without seeking a  
22 waiver under the process provided in this section; provided  
23 the ~~architecturally significant building, memorial building,~~  
24 ~~memorial street, or monument~~ shall be returned to its prior  
25 location or condition, or both, as soon as safely and  
26 reasonably possible, and no later than one year after the  
27 completion of the repair or construction. ~~If the repair or~~

1 ~~construction is expected to take more than one year, the~~  
2 ~~controlling entity shall seek a waiver under the process~~  
3 ~~specified in this section.~~

4 "c.(e) The committee shall establish and publish a  
5 quarterly schedule of submission deadlines and committee  
6 meetings for the review of applications for waiver. If the  
7 committee fails to act on a ~~completed~~ eligible, properly  
8 submitted application for a waiver within 90 days after ~~the~~  
9 ~~application is submitted to the committee~~ a quarterly deadline  
10 for submissions, the waiver shall be deemed granted.

11 "d.(f) If the Attorney General determines that an  
12 entity exercising control of public property has ~~renamed a~~  
13 ~~memorial school or has relocated, or removed, altered,~~  
14 ~~renamed, or otherwise disturbed an architecturally significant~~  
15 ~~building, memorial building, memorial street, or a monument~~  
16 ~~from situated on that public property for 50 or more years~~  
17 without first obtaining a waiver from the committee as  
18 required by this article, or failed to comply with the  
19 conditions and instructions issued by the committee upon the  
20 grant of a waiver pursuant to this section, the entity shall  
21 be fined twenty-five thousand dollars (\$25,000) for each  
22 violation. The fine shall be collected by the Attorney  
23 General, forwarded by his or her office to the State  
24 Treasurer, and deposited into the Alabama State Historic  
25 Preservation Fund created in Section 41-9-255.

1           "~~e.~~(g) Judicial review of the final decision of the  
2 committee may be sought pursuant to the Alabama Administrative  
3 Procedure Act, Chapter 22 of this title.

4           "§41-9-236.

5           "This article does not apply to any of the  
6 following:

7           "(1) Art and artifacts in the collections of  
8 museums, archives, and libraries.

9           "~~(2) Any architecturally significant building,~~  
10 ~~memorial building, memorial street, or monument~~ that is any of  
11 the following:

12           "a. Located on public property under the control of,  
13 or acquired by, the State Department of Transportation, which  
14 may interfere with the construction, maintenance, or operation  
15 of the public transportation system. The department shall  
16 strive to ensure that any ~~architecturally significant~~  
17 ~~building, memorial building, memorial street, or monument~~ is  
18 preserved to the greatest extent possible.

19           "b. Located on public property under the control of,  
20 or acquired by, a county or municipal body or a university,  
21 which may interfere with the construction, maintenance, or  
22 operation of the public transportation system. The governing  
23 body of the county, municipality, or university shall strive  
24 to ensure that any ~~architecturally significant building,~~  
25 ~~memorial building, memorial street, or monument~~ is preserved  
26 to the greatest extent possible.

1            "c. Located on public property operated or used by a  
2 utility, which may interfere with providing utility service.  
3 The utility shall strive to ensure that any ~~architecturally~~  
4 ~~significant building, memorial building, memorial street, or~~  
5 monument is preserved to the greatest extent possible.

6            "d. Located on public property under the control of,  
7 or acquired by, the Alabama State Port Authority, which may  
8 interfere with the construction, maintenance, or operation of  
9 the port infrastructure or port related activities. The  
10 authority shall strive to ensure that any ~~architecturally~~  
11 ~~significant building, memorial building, memorial street, or~~  
12 monument is preserved to the greatest extent possible.

13            "§41-9-237.

14            "The Committee on Alabama Monument Protection,  
15 pursuant to the Alabama Administrative Procedure Act, shall  
16 adopt rules as necessary to provide for the implementation of  
17 this article including, but not limited to, ~~further defining~~  
18 ~~an architecturally significant building~~ schedules, forms, and  
19 requirements for the consideration of applications for waivers  
20 and public notices required in conjunction with emergency  
21 repairs or construction affecting a monument."

22            Section 2. All laws or parts of laws which conflict  
23 with this act are repealed. Specifically, Section 41-9-230,  
24 Code of Alabama 1975, providing for the name of the Alabama  
25 Memorial Preservation Act of 2017, is repealed.

1                   Section 3. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.