

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.

A BILL

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§41-9-231.

"For the purposes of this article, the following 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) 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) 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) 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 "e. (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~~ an 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.

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

"§41-9-236.

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

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

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

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

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

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

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

"§41-9-237.

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

Section 2. All laws or parts of laws which conflict with this act are repealed. Specifically, Section 41-9-230, Code of Alabama 1975, providing for the name of the Alabama 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.