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SENATE BILL NO. 183

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government
on February 5, 2020)

(Patrons Prior to Substitute—Senators Locke, Spruill [SB 560], and Deeds [SB 620])

*A BILL to amend and reenact §§ 15.2-1812, 15.2-1812.1, and 18.2-137 of the Code of Virginia and to repeal Chapter 119 of the Acts of Assembly of 1890, relating to war memorials for veterans.***Be it enacted by the General Assembly of Virginia:****1. That §§ 15.2-1812, 15.2-1812.1, and 18.2-137 of the Code of Virginia are amended and reenacted as follows:****§ 15.2-1812. Memorials for war veterans.**

A. A locality may, within the geographical limits of the locality, authorize and permit the erection of monuments or memorials for *the veterans of* any war or conflict, or ~~for~~ any engagement of such war or conflict, to include the following ~~monuments or memorials~~: Algonquin (1622), French and Indian (1754-1763), Revolutionary (1775-1783), War of 1812 (1812-1815), Mexican (1846-1848), ~~Confederate or Union monuments or memorials of the Civil War Between the States (1861-1865), Spanish-American (1898), World War I (1917-1918), World War II (1941-1945), Korean (1950-1953), Vietnam (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003-).~~ If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, "disturb or interfere with" includes removal of, damaging or defacing monuments or memorials, or, in the case of the War Between the States, the placement of Union markings or monuments on previously designated Confederate memorials or the placement of Confederate markings or monuments on previously designated Union memorials *Notwithstanding any other provision of law, general or special, a locality may remove, relocate, contextualize, cover, or alter any such monument or memorial on the locality's public property, regardless of when the monument or memorial was erected, after complying with the provisions of subsection B.*

B. The governing body of any locality proposing to remove, relocate, contextualize, cover, or alter any such monument or memorial from the locality's public property shall initiate such process by passing a resolution stating its intention. Concurrent with the resolution, the governing body shall formally request the Virginia Department of Historic Resources (Department) to prepare a report that, at a minimum, sets forth the background of the person or people depicted on the monument or memorial, the circumstances surrounding the establishment of the monument or memorial, and whether the monument or memorial qualifies for placement on the Virginia Landmarks Register or the National Register of Historic Places. The Department may include any additional information in its report that it believes will be helpful to the governing body and shall complete such report within 90 days of the request. The locality shall (i) pay the actual cost of the preparation of the report to the Department, (ii) post a copy of the report prominently on its website, and (iii) make a copy of the report available for inspection at its administrative offices. No sooner than 30 days after publication of the report on its website, the governing body shall hold a public hearing to solicit comments. No sooner than 10 days after completion of the public hearing, the governing body may vote whether to remove, relocate, contextualize, cover, or alter the monument or memorial. A motion to remove, relocate, contextualize, cover, or alter the monument or memorial shall require an affirmative vote of two-thirds of the members elected to the governing body for passage. Alternatively, prior to voting on any such motion, and after complying with the other provisions of this subsection, the governing body may by majority vote call for an advisory referendum pursuant to subsection C. Prior to removing, relocating, or destroying any such publicly owned monument or memorial, the local governing body shall first, for a period of 30 days, offer the monument or memorial for relocation and placement to any museum, historical society, government, or military battlefield. The local governing body shall have sole authority to determine the final disposition of the monument or memorial.

C. A locality may, pursuant to subsection B, petition the judge of a circuit court having jurisdiction over the locality for an advisory referendum to be held on the question of the proposal to remove, relocate, contextualize, cover, or alter any monument or memorial from the locality's public property. Upon the receipt of such petition, the circuit court shall order an election to be held thereon at a time that is in conformity with § 24.2-682. The ballots shall be prepared, distributed, and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § 24.2-684.

D. The governing body may appropriate a sufficient sum of money out of its funds to complete or

aid in the erection, *contextualization, covering, removal, relocation, or alteration* of monuments or memorials to the veterans of such wars *or conflicts, or any engagement of such wars or conflicts*. The governing body may also make a special levy to raise the money necessary for the erection or completion of any such monuments or memorials, or to supplement the funds already raised or that may be raised by private persons, Veterans of Foreign Wars, the American Legion, or other organizations. It may also appropriate, out of any funds of such locality, a sufficient sum of money to permanently care for, protect, and preserve such monuments or memorials and may expend the same thereafter as other funds are expended.

§ 15.2-1812.1. Action for damage to memorials for war veterans.

A. If any monument, ~~marker~~ or memorial for war veterans as designated in §§ § 15.2-1812 and ~~18.2-137 is violated or encroached upon~~ *damaged or defaced*, an action for the recovery of damages may be commenced ~~by the following as follows:~~

1. For a publicly owned monument, ~~marker~~ or memorial, *such action may be commenced against a person other than a locality or its duly authorized officers, employees, or agents* by the attorney for the locality in which it is located; ~~or, if no such action has commenced within sixty days following any such violation or encroachment, by any person having an interest in the matter with the consent of the governing body or public officer having control of the monument or memorial; and~~

2. For a privately owned monument, ~~marker~~ or memorial *on a locality's public property, such action may be commenced by the private organization, society or museum that owns it or any member of such organization, society or museum owner of such monument or memorial. No locality or its officers, employees, or agents shall be liable for damages pursuant to this section when taking action pursuant to § 15.2-1812 except for gross negligence by a duly authorized officer, employee, or agent of the locality.*

Damages may be awarded in such amounts as necessary for the purposes of rebuilding, repairing, preserving, and restoring such memorials or monuments ~~to preencroachment condition~~. Damages other than those litigation costs recovered from any such action shall be used exclusively for said purposes.

B. Punitive damages may be recovered for reckless, willful, or wanton conduct resulting in the defacement of, malicious destruction of, unlawful removal of, or placement of improper markings, monuments, or statues on memorials for war veterans.

C. The party who initiates and prevails in an action authorized by this section shall be entitled to an award of the cost of the litigation, including reasonable ~~attorney's~~ attorney fees. The provisions of this section shall not be construed to limit the rights of any person, organization, society, or museum to pursue any additional civil remedy otherwise allowed by law.

§ 18.2-137. Injuring, etc., any property, monument, etc.

A. If any person unlawfully destroys, defaces, damages, or removes without the intent to steal any property, real or personal, not his own, or breaks down, destroys, defaces, damages, or removes without the intent to steal, any monument or memorial for war veterans, *not his own*, described in § 15.2-1812; any monument erected ~~for the purpose of marking to mark~~ the site of any engagement fought during the Civil War ~~between the States, or for the purpose of designating any memorial to designate~~ the boundaries of any city, town, tract of land, or any tree marked for that purpose, he shall be guilty of a Class 3 misdemeanor; provided that the court may, in its discretion, dismiss the charge if the locality or organization *that owns or is* responsible for maintaining the injured property, monument, or memorial files a written affidavit with the court stating it has received full payment for the injury.

B. If any person *who is not the owner of such property* intentionally causes such injury, he ~~shall be~~ is guilty of (i) a Class 1 misdemeanor if the value of or damage to the property, memorial, or monument is less than \$1,000 or (ii) a Class 6 felony if the value of or damage to the property, memorial, or monument is \$1,000 or more. The amount of loss caused by the destruction, defacing, damage, or removal of such property, memorial, or monument may be established by proof of the fair market cost of repair or fair market replacement value. Upon conviction, the court may order that the defendant pay restitution.

2. That Chapter 119 of the Acts of Assembly of 1890 is repealed.