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HOUSE BILL NO. 1537

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns)

(Patrons Prior to Substitute—Delegates McQuinn and Hudson [HB 1625])

House Amendments in [] - February 10, 2020

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 upon the affirmative vote of its governing body, regardless of when the monument or memorial was erected.

B. Prior to removing [; and] 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.

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 or employees 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

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HB1537EH1

60 than those litigation costs recovered from any such action shall be used exclusively for said purposes.

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

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

68 **§ 18.2-137. Injuring, etc., any property, monument, etc.**

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

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

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