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STATE GOVERNMENT

State Flag, Seal, and Other Symbols: Change State Flag; Provide for an Advisory Referendum Election to Determine Whether Voters Desire a Further Change in the State Flag; Provide for Severability

CODE SECTION:	O.C.G.A. § 50-3-1 (amended)
BILL NUMBER:	HB 380
ACT NUMBER:	4
GEORGIA LAWS:	2003 Ga. Laws 26
SUMMARY:	The Act changes the design and the description of the Georgia state flag, replacing the official flag adopted by the Georgia General Assembly in 2001. The Act also calls for an advisory referendum in 2004 for voters to determine whether the General Assembly should keep the 2003 design or revert back to the 2001 design. The Act requires the Secretary of State to call for that referendum and to certify the results to the Governor and the General Assembly. The Act further provides that if any portion of the Act is unconstitutional, the other sections of the Act shall remain in full force.
EFFECTIVE DATE:	May 8, 2003

History

The official flag of the State of Georgia has been at the center of controversy since the Georgia General Assembly incorporated the Confederate battle emblem into the flag's design in 1956.¹ After numerous failed attempts to change the flag design, a new state flag

1. For an overview of prior changes to the state symbol, see Darren Summerville, *Review of Selected 2001 Georgia Legislation*, 18 GA. STATE U. L. REV. 305, 306 (2001). The General Assembly arguably modified the flag in 1956 in response to school desegregation. *See id.*

finally passed the General Assembly in 2001.² Former Governor Roy Barnes played a key role in guiding the 2001 flag legislation through the General Assembly.³ While supporters intended this legislation to quell the decades-old controversy, “[s]ubstantive opposition to the new compromise version of the flag came from virtually every political and social circle, including Confederate faithful, lobbyists, civil rights groups, and members of the general public.”⁴ Civil rights groups were not pleased that the 2001 flag’s design incorporated the controversial 1956 flag, and several groups of Georgians were dissatisfied with the Confederate icon’s relegation.⁵ Moreover, some Georgians were dissatisfied with former Governor Barnes’ surprise introduction of the new design and its swift movement through the General Assembly.⁶

State Republicans publicly expressed their intention to revisit the flag issue “in the 2002 gubernatorial elections.”⁷ Indeed, they did revisit the issue.⁸ In his successful gubernatorial campaign, Republican candidate Sonny Perdue promised voters the opportunity to have their voice heard in a referendum on the state flag.⁹ Additionally, several groups publicly opposed former Governor Barnes and those responsible for the 2001 revision.¹⁰ With Republicans controlling the governor’s office and the Senate in 2003, the General Assembly once again addressed the issue of the state’s official flag.

2. *Id.* at 309.

3. *Id.* at 314. Former Governor “Barnes’ moving remarks are regarded by many as the crucial factor in winning the final votes for [the 2001 flag bill].” *Id.*

4. *See* Sumerville, *supra* note 1, at 320.

5. *Id.* These were not the only concerns various segments of the population expressed. Some Georgians were not pleased with the aesthetics of the new flag, which several commentators publicly likened to a “Denny’s placemat.” *See, e.g.,* Stacy Sheldon, *The Lawmakers: Two Senators, One City, Few Similar Views Columbus, Like State, Divided a New Georgia Flag: Will It Fly?*, ATLANTA J. CONST., Jan. 29, 2001, available at 2001 WL 3657317.

6. *See* Sumerville, *supra* note 1, at 320. The legislation was the first bill taken up by the House in 2001, a non-election year, and was a key focus for the General Assembly during the first week of the session. *See id.* at 320.

7. *See id.*

8. *See* Jim Galloway & Carlos Campos, *House OKs Perdue’s Referendum on Flag*, ATLANTA J. CONST., Apr. 9, 2003, at A1, available at 2003 WL 16550684.

9. *See id.* Voters did not forget: On the day of Governor Perdue’s inauguration, one group rented airplanes to circle the venue with signs reminding the Governor of his promise. Jim Galloway, *Airborne ‘Flaggers’: Who Pays to Fly Banners?*, ATLANTA J. CONST., May 28, 2003, at A1, available at 2003 WL 56078032.

10. Galloway & Campos, *supra* note 8. These groups were commonly referred to as “flaggers.” Jim Galloway & Alan Judd, *Final Salute Eludes Flag*, ATLANTA J. CONST., Apr. 23, 2003, at A1, available at 2003 WL 19314731.

*HB 380**Introduction in the House*

With the General Assembly again taking up this controversial issue, legislators introduced a myriad of flag-related bills.¹¹ Some bills proposed immediately changing the flag's design.¹² Another bill simply contained a voter referendum,¹³ while others combined design changes with referendums.¹⁴ One resolution called for a flag commission to present two alternative designs,¹⁵ and another bill proposed prohibiting flying the flag of any nation or entity that has ever declared war against the United States of America, presumably including the Confederacy.¹⁶

Representatives Glenn Richardson, Larry O'Neal, Warren Massey, and Lynn Westmoreland of the 26th, 117th, 24th, and 86th districts, respectively, sponsored HB 380.¹⁷ HB 380 called for an amendment to Code section 50-3-1.¹⁸ The Speaker referred the bill to the House Rules Committee on February 13, 2003.¹⁹ The House Committee favorably reported a substitute on April 7, 2003, incorporating elements of several flag bills introduced during the legislative session.²⁰ The next day, the House adopted the Committee substitute without amendment.²¹ The bill was then read and assigned to the Senate Rules Committee on April 9, 2003, and the Committee

11. See *infra* notes 12-16 and accompanying text.

12. See HB 732, as introduced, 2003 Ga. Gen. Assem. (reverting the flag to the pre-1956 design); HB 773, as introduced, 2003 Ga. Gen. Assem. (substituting a new design for the official flag of Georgia).

13. See HB 380, as introduced, 2003 Ga. Gen. Assem. (calling for a two-question referendum allowing the voter to decide (a) whether to retain the 2001 flag and (b) whether the voter prefers the 1956 flag or the pre-1956 flag).

14. See HR 1, as introduced, 2003 Ga. Gen. Assem. (changing the flag to a new design immediately and providing for a referendum addressing only whether the state should revert to the flag adopted in 1956); HB 823, as introduced, 2003 Ga. Gen. Assem. (changing the flag to a new design immediately and providing for a referendum addressing only whether the newly-adopted flag should remain as the official flag).

15. See HB 898, as introduced, 2003 Ga. Gen. Assem.

16. See HB 899, as introduced, 2003 Ga. Gen. Assem.

17. See HB 380, as introduced, 2003 Ga. Gen. Assem. Representative Richardson was Governor Perdue's floor leader. Ken Ellingwood, *Dixie Emblem May Be Dropped From Georgia State Flag*, L.A. TIMES, Apr. 5, 2003, at 17, available at 2003 WL 2396451.

18. See HB 380, as introduced, 2003 Ga. Gen. Assem.

19. See State of Georgia Final Composite Status Sheet, HB 380, Apr. 25, 2003.

20. *Id.*

21. *Id.*; see HB 380 (HCS), 2003 Ga. Gen. Assem.

reported the bill favorably on April 17, 2003.²² The Senate passed HB 380 on April 22, 2003, with three floor amendments.²³ The House agreed to an amendment of the Senate's floor-amended version of HB 380 on April 25, 2003, and the Senate approved the change that same day.²⁴

Consideration by the House Rules Committee

HB 380, as referred to the House Rules Committee, did not originally call for an immediate change to the flag's design.²⁵ Instead, the bill provided for only a two-question referendum: the voters would (1) choose whether to retain the flag as enacted in 2001 and next, regardless of their answer to this question, (2) decide whether they prefer the 1956 flag or the pre-1956 flag in the event a majority of voters decide to abandon the 2001 flag.²⁶ The original bill did not indicate whether the referendum's result would bind the General Assembly.²⁷

The House Committee substitute, as introduced by Representative Richardson, incorporated elements of several flag bills into a single bill.²⁸ The new provisions called for the immediate adoption of a new flag design²⁹ resembling the pre-1956 flag, with the exceptions of (1) adding of the phrase "IN GOD WE TRUST" in the white center stripe and (2) extending the bottom scarlet band to the flag's full length.³⁰ The House Committee substitute also split the referendum into two phases.³¹ First, voters would decide during the 2004

22. See State of Georgia Final Composite Status Sheet, HB 380, Apr. 25, 2003.

23. *Id.*

24. See *id.* The House approved the final version of the bill by a 91-to-86 vote, and the Senate approved it by a 33-to-23 vote. See Georgia House of Representatives Voting Record, HB 380 (Apr. 25, 2003); Georgia Senate Voting Record, HB 380 (Apr. 25, 2003).

25. See HB 380, as introduced, 2003 Ga. Gen. Assem.

26. See *id.*

27. See *id.*

28. See Telephone Interview with Rep. Glenn Richardson, House District No. 26 (Apr. 18, 2003) [hereinafter Richardson Interview].

29. See HB 380 (HCS), 2003 Ga. Gen. Assem.

30. See *id.* Many credit Representative Franklin with this design. Representative Franklin, who was a strong supporter of the Confederate emblem, changed his mind and spoke to the House Rules Committee, "repeatedly [citing] biblical passages and [saying] the rebel 'x' has been ruined forever by white supremacists." *Georgia Governor Backs Compromise State Flag*, CHI. TRIB., Apr. 5, 2003, at C, available at 2003 WL 18164667.

31. See HB 380 (HCS), 2003 Ga. Gen. Assem.

presidential primary whether to retain the newly enacted design.³² If a majority of voters decided to abandon the new design, voters could then decide between the 1956 flag and the pre-1956 flag during the 2004 general election.³³ Further, the substitute clearly provided that the referendum required no further action by the General Assembly to become effective, though the referendum did not preclude the General Assembly from changing the flag in the future.³⁴

Representative Richardson described the modifications as necessary to “get a flag bill out of the House Rules Committee.”³⁵ The substitute arose from a joint meeting of Democrats and Republicans.³⁶ Because the bill integrated elements of several bills, Representative Richardson referred to the bill as a “consolidated, conditional compromise.”³⁷ The House Committee favorably endorsed the substitute to HB 380 on April 7, 2003, by a vote of 17 to 9.³⁸

Floor Debate and Passage by the House

The House debated the Committee substitute to HB 380 on April 8, 2003.³⁹ Anticipating lengthy debate on this issue, the House voted that morning to delimit debate to ten minutes per speaker per bill.⁴⁰ Nevertheless, floor debate lasted over six-and-a-half hours and included more than 40 speakers.⁴¹ The majority of the speakers were members of the Congressional Black Caucus rising to “the well” in

32. *See id.*

33. *See id.*

34. *See id.* Whether a referendum could have this binding effect is questionable. In an official opinion, former Georgia Attorney General Michael Bowers stated that “the General Assembly may not so delegate its legislative power” in a statewide referendum absent constitutional authority. 1993 Ga. Op. Att’y Gen. 12, Op. No. 93-5 (1993).

35. *See* Richardson Interview, *supra* note 28.

36. *See id.*

37. *Id.* Interestingly, the proponents of the 2001 flag design heralded that flag as a “compromise” flag. *See, e.g.*, Summerville, *supra* note 1, at n.67.

38. *See* State of Georgia Final Composite Status Sheet, HB 380, Apr. 25, 2003.

39. *Id.*

40. *See* Audio Recording of House Proceedings, Apr. 8, 2003 (remarks by Rep. Jimmy Skipper), at <http://www.ganet.org/services/leg/audio/2003archive.html> [hereinafter House Audio One]. Representative Dukes expressed that he was “greatly disturbed” that the House would delimit debate on this day (the 33rd day of the session). The motion passed by a 155-to-7 vote. *Id.*

41. *Id.* The lengthy floor debates even precluded a dinner break, though the City of Atlanta generously provided takeout from the Varsity. Representatives preferred hamburgers over chilidogs by a vote of 98 to 67. *Id.*

opposition to HB 380 because the referendum's second phase included the option to revert back to the controversial 1956 flag.⁴² Several legislators expressed concerns that Georgia may end up like Mississippi, where voters approved, via referendum, placing a Confederate battle emblem on that state's flag.⁴³ Other Representatives discussed their personal encounters with the St. Andrew's cross as a symbol of oppression or expressed the general opinion that the flag issue is one of divisiveness.⁴⁴ Several speakers expressed disappointment in their colleagues for supporting this bill.⁴⁵

Opponents further argued that the public has never decided, via referendum, on any official state symbol and that the House has the responsibility of representing constituent voters' viewpoints.⁴⁶ Opponents contended the General Assembly needed to address more important issues, such as the budget and education.⁴⁷ Finally, the opposition noted the social and economic advancements Georgia has made over the past 30 years and cautioned against risking the economic loss that may result from boycotts if Georgia regresses by adopting a flag containing the St. Andrew's cross.⁴⁸ Several speakers commented that the world was watching, and adopting this bill would embarrass the state.⁴⁹

42. See House Audio One, *supra* note 40. The 1956 flag, of course, included the St. Andrew's cross, the battle emblem of the Confederacy. While the symbol represents history and heritage to some Georgians, other groups have utilized the St. Andrew's cross as a "symbol of hate." See Summerville, *supra* note 1, at 306, 310.

43. See House Audio One, *supra* note 40.

44. See House Audio One, *supra* note 40. Representative Smyre told the press, "the [G]overnor says he's wanting to heal, but I really think he's trying to divide." The Governor responded to the allegations by stating, "I am disheartened. I am saddened. I have not played the race card in this effort at all." Ernie Suggs & Add Seymour, Jr., *A House Divided Over the Flag: Proposal OK'd Largely Along Racial Lines*, ATLANTA J. CONST., Apr. 10, 2003, at D1, available at 2003 WL 16550945.

45. See generally House Audio One, *supra* note 40. Representative Watson stated, "You deserted me today, both white Democrats and Republicans . . . [y]ou deserted me today . . . you said you were my friend. You didn't have the courtesy or the decency to ask me about this." See *id.* (remarks by Rep. Stan Watson).

46. See *id.* Dekalb County Chief Executive Officer Vernon Jones told the press, "One can now argue that every time we change the Georgia state bird or the Georgia state flower, 'Let's have a referendum on it.'" Suggs & Seymour, *supra* note 44.

47. Suggs & Seymour, *supra* note 44.

48. *Id.* Civil rights leader Martin Luther King III "said he and many of his colleagues are ready for an 'economic withdrawal,' a boycott." *Id.*

49. See generally House Audio One, *supra* note 40.

HB 380 supporters stated that the bill was a compromise that incorporated elements from several proposals.⁵⁰ Moreover, they claimed this bill would finally end the controversy surrounding the 2001 flag alteration.⁵¹ Others assured their colleagues the second referendum would never come to fruition because voters would support the 2003 design in the first referendum.⁵² In support of this version, Governor Perdue told the press, “In the past, people have felt excluded from the process. This proposal will allow the people of Georgia to express their views on our state flag and moves us a step closer to finding a resolution to this important issue.”⁵³

Several Representatives submitted floor amendments, but no amendment to HB 380 passed on April 8, 2003.⁵⁴ Some of these amendments addressed aesthetic concerns.⁵⁵ Representative Don Parsons of the 29th district proposed moving the words “IN GOD WE TRUST” out of the white center stripe and into the blue square.⁵⁶ This amendment’s primary purpose was aesthetic, as the bold phrase appeared awkward when viewing the flag from behind.⁵⁷ This amendment, however, failed by a vote of 41 to 128.⁵⁸ Representative Pam Stephenson of the 60th district proposed an amendment to remove the 13 stars encircling the great seal of the state.⁵⁹ This amendment also failed, by a vote of 62 to 113.⁶⁰

Representative Howard Moseby of the 59th district proposed an amendment that would have drastically changed the House Committee substitute.⁶¹ Representative Moseby proposed striking the referendum provisions and adding a prohibition against incorporating images into the state flag from any nation or entity that has ever

50. See Carlos Campos, *Legislature 2003: Referendum on Flag Draws Opposition; Some Worry Rebel Symbol May Emerge*, ATLANTA J. CONST., Apr. 9, 2003, at B5, available at 2003 WL 16550629.

51. See House Audio One, *supra* note 40.

52. See Galloway & Campos, *supra* note 8, at A1. Representative Massey stated, “In the referendum I will vote for the Franklin flag.” *Id.* Representative Richardson professed, “Let the people of Georgia put it to rest once and for all. I trust the people of Georgia.” Campos, *supra* note 50, at B5.

53. See Ellingwood, *supra* note 17.

54. See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).

55. See *infra* notes 56-60 and accompanying text.

56. See Failed House Floor Amendment to HB 380, introduced by Rep. Don Parsons, Apr. 8, 2003.

57. See House Audio One, *supra* note 40.

58. See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).

59. See Failed House Floor Amendment to HB 380, introduced by Rep. Pam Stephenson, Apr. 8, 2003.

60. See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).

61. See Failed House Floor Amendment to HB 380, introduced by Rep. Howard Moseby, Apr. 8, 2003.

declared war against the United States.⁶² This would have effectively prohibited the Confederate battle emblem from appearing on the state flag. This amendment failed by a vote of 61 to 116.⁶³

Yet another proposed amendment called for the creation of a flag committee to report to the Governor by December 31, 2003 with two alternative state flag designs.⁶⁴ This amendment failed by a vote of 65 to 111.⁶⁵ Representative Virgil Fludd of the 48th district offered an amendment to remove the automatic implementation of the referendum's result by requiring further General Assembly action.⁶⁶ This amendment failed by a vote of 64 to 112.⁶⁷ Representative Ron Sailor of the 61st district proposed a similar amendment that failed by a vote of 70 to 106.⁶⁸ Representative Calvin Smyre of the 111th district proposed an amendment to completely eliminate the referendum, but that amendment failed by a 75-to-101 vote.⁶⁹

Some amendments targeted which flag to immediately adopt.⁷⁰ Representative Al Williams of the 128th district proposed an amendment to retain the 2001 flag in place of the flag offered by the House Committee substitute.⁷¹ That amendment failed by a vote of 59 to 117.⁷² Representative Quincy Murphy of the 97th district offered an amendment to adopt the pre-1956 flag immediately in lieu of a new design.⁷³ The House voted against that amendment 70 to 105.⁷⁴

Representative Randall Mangham of the 62nd district proposed an amendment to completely eliminate any state flag and to provide that only the United States flag be flown or displayed on state property.⁷⁵

62. *See id.*

63. *See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).*

64. *See Failed House Floor Amendment to HB 380, introduced by Rep. Roger Bruce, Apr. 8, 2003.*

65. *See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).*

66. *See Failed House Floor Amendment to HB 380, introduced by Rep. Virgil Fludd, Apr. 8, 2003.* This would have avoided the potentially unconstitutional binding referendum. *See supra* note 34.

67. *See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).*

68. *See id.*; *Failed House Floor Amendment to HB 380, introduced by Rep. Ron Sailor, Apr. 8, 2003 (proposing to insert the word "nonbinding" throughout the bill).*

69. *See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003); Failed House Floor Amendment to HB 380, introduced by Rep. Calvin Smyre, Apr. 8, 2003.*

70. *See infra* notes 71-74 and accompanying text.

71. *See Failed House Floor Amendment to HB 380, introduced by Rep. Al Williams, Apr. 8, 2003.*

72. *See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).*

73. *See Failed House Floor Amendment to HB 380, introduced by Rep. Quincy Murphy, Apr. 8, 2003.*

74. *See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).*

75. *See Failed House Floor Amendment to HB 380, introduced by Rep. Randall Mangham, Apr. 8, 2003.*

This amendment failed by a vote of 64 to 112.⁷⁶ Representative Don Wix of the 33rd district offered a similar amendment, though his amendment also afforded the Governor power to authorize, through executive order, the display of additional flags.⁷⁷ This amendment failed by a 72-to-104 vote.⁷⁸

Representative Jim Stokes of the 72nd district proposed an amendment to eliminate the referendum's second phase.⁷⁹ This amendment failed by a vote of 76 to 100.⁸⁰

Ultimately, the Committee substitute passed the House without floor amendment by a vote of 111 to 67.⁸¹

Floor Debate and Amendment by the Senate

“Anticipating the bill’s arrival in the Senate, that chamber’s leaders served notice that they would not accept any changes to the House version, including any attempt to remove the Confederate battle emblem from the vote.”⁸² The bill was read and referred to the Senate Rules Committee on April 9, 2003.⁸³ The Senate Committee reported the bill favorably to the Senate without amendment on April 17, 2003.⁸⁴ Only one Senate Committee Democrat voted in Committee, as two “walked out before the vote when Republicans made it clear no changes would be allowed” and the other two “did not attend the meeting.”⁸⁵ The Senate debated HB 380 on April 22, 2003.⁸⁶

The Senate deliberations took a much different tone than the House debates, though the Senate took nearly the same amount of time to

76. See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).

77. See Failed House Floor Amendment to HB 380, introduced by Rep. Don Wicks, Apr. 8, 2003.

78. See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).

79. See Failed House Floor Amendment to HB 380, introduced by Rep. Jim Stokes, Apr. 8, 2003.

80. See Georgia House of Representatives Voting Record, HB 380 (Apr. 8, 2003).

81. *Id.* Not one member of the Black Caucus voted in favor of this bill. *Id.*

82. Galloway & Campos, *supra* note 8. Senate Majority Leader Tom Price stated “[t]hat would not be acceptable.” *Id.*

83. See State of Georgia Final Composite Status Sheet, HB 380, Apr. 25, 2003.

84. *Id.* This was the second-to-last day of the 2003 legislative session. Jim Galloway, *Flag Bill Dominates Final Days of Session*, ATLANTA J. CONST., Apr. 22, 2003, at B1, available at 2003 WL 19314605.

85. See Jim Galloway, *A Flag Too Big? Fixing Glitch May Doom Vote*, ATLANTA J. CONST., Apr. 18, 2003, at A1, available at 2003 WL 19314237 [hereinafter *A Flag Too Big?*].

86. See *id.*; State of Georgia Final Composite Status Sheet, HB 380, Apr. 25, 2003.

decide the issue.⁸⁷ Much of the debate centered around technical aspects of the bill: whether the Senate should require a fiscal note for the expenditure, and who should provide that note; whether the Senate should correct a sizing issue with the dimensions; whether the Senate should replace incorrect language referencing the coat of arms versus the great seal; and how to prepare the pictures on the absentee ballots.⁸⁸ Senators introduced several amendments, three of which passed.⁸⁹ Senator George Hooks of the 14th district proposed an amendment to modify the flag's dimensions so that the flag measured a standard three-foot-by-five-foot.⁹⁰ Proponents of this amendment stressed the importance of passing accurate legislation, recognizing the House made an unintended error in drafting the dimensions.⁹¹ The Hooks amendment also moved the phrase "IN GOD WE TRUST" from the white stripe into the blue box on the left third of the flag.⁹² The amendment further defined the 13 stars encircling the great seal as "representing Georgia and the 12 other original states that formed the United States of America."⁹³ Finally, this amendment also added language clarifying that the Secretary of State would serve as the

87. See Audio Recording of Senate Proceedings, Apr. 22, 2003, at <http://www.ganet.org/services/leg/audio/2003archive.html> [hereinafter Senate Audio One]. Compare House Audio One, *supra* note 40, with Senate Audio One.

88. See Senate Audio One, *supra* note 87.

89. *Id.*; see *infra* notes 90-95 and accompanying text (explaining the effect of the amendments). The bill's proponents feared any amendment would significantly reduce the likelihood of final passage. *A Flag Too Big?*, *supra* note 85.

90. See HB 380 (SFA1), 2003 Ga. Gen. Assem. The House-approved version called for a flag that measured three-foot-by-six-foot. Secretary of State Cathy Cox publicly stated she could not comply with those requirements because the flag would nearly touch the ground on a standard indoor pole. Further, the flag would appear awkward because most other flags, including the United States flag, are a standard three-foot-by-five-foot. *A Flag Too Big?*, *supra* note 85.

91. See Senate Audio One, *supra* note 87.

92. Compare HB 380 (HCS), 2003 Ga. Gen. Assem., with HB 380 (SFA1), 2003 Ga. Gen. Assem. The House also considered this modification. See Failed House Floor Amendment to HB 380, introduced by Rep. Don Parsons, Apr. 8, 2003. The modification corrects the flag's awkward appearance from behind, where the bold, backward letters stand out on the white stripe. See Senate Audio One, *supra* note 87.

93. Compare HB 380 (HCS), 2003 Ga. Gen. Assem., with HB 380 (SFA1), 2003 Ga. Gen. Assem. Because Representative Franklin based this flag design on one of the Confederacy's original flags, the 13 stars originally represented the 13 Confederate states. See Senate Audio One, *supra* note 87.

custodian of the state flag pursuant to Code section 50-3-4.⁹⁴ This amendment passed the Senate by a vote of 29 to 26.⁹⁵

Senator David Adelman of the 42nd district introduced an amendment requiring descriptions of the flags to accompany the pictures on the referendum to assist the visually impaired in voting.⁹⁶ This amendment passed by a vote of 43 to 13.⁹⁷ Senators Charles Tanksley, Steve Thompson, and George Hooks of the 32nd, 33rd, and 14th districts, respectively, introduced the third successful floor amendment.⁹⁸ This amendment afforded the Secretary of State the ability to attach pictures to the absentee ballots in lieu of printing color ballots.⁹⁹ The Senate passed this cost-saving measure by a vote of 36 to 20.¹⁰⁰

Senators introduced other amendments, but they failed to receive the required votes.¹⁰¹ Senator Steve Thompson of the 33rd district offered an amendment to retain the 2001 flag as the current flag and to provide voters with a referendum containing the 2001 flag, the 1956 flag, and the pre-1956 flag.¹⁰² Senator Michael Meyer von Bremen of the 12th district offered an amendment substituting the referendum with another referendum enabling voters to decide whether the General Assembly should amend the Constitution to require referendums for future flag changes.¹⁰³ Senator Connie Stokes of the 43rd district, among others, offered an amendment to limit HB 380 to only provide for a flag commission that would report to the Governor and the General Assembly.¹⁰⁴ Senator Adelman

94. HB 380 (SFA1), 2003 Ga. Gen. Assem. The Senate added this language apparently to ensure the Secretary of State, as custodian of the flag, may correct any defect in the language passed by the General Assembly and may not refuse to fly the new flag, as Secretary of State Cathy Cox had threatened to do with the House-approved design. *See A Flag Too Big?*, *supra* note 85.

95. *See Georgia Senate Voting Record*, HB 380 (Apr. 22, 2003). HB 380 opponents applauded when the amendment passed, as the bill had to again survive a vote in the House. *See Senate Audio One*, *supra* note 87. Four Republicans joined 25 Democrats in passing the amendment. *Georgia Senate Voting Record*, HB 380 (Apr. 22, 2003).

96. *See* HB 380 (SFA2), 2003 Ga. Gen. Assem.

97. *See Georgia Senate Voting Record*, HB 380 (Apr. 22, 2003).

98. *See* HB 380 (SFA3), 2003 Ga. Gen. Assem.

99. *See id.*

100. *See Georgia Senate Voting Record*, HB 380 (Apr. 22, 2003).

101. *See id.*

102. *See Failed Senate Floor Amendment to HB 380*, introduced by Sen. Steve Thompson, Apr. 22, 2003.

103. *See Failed Senate Floor Amendment to HB 380*, introduced by Sen. Michael Meyer von Bremen, Apr. 22, 2003.

104. *See Failed Senate Floor Amendment to HB 380*, introduced by Sen. Connie Stokes, Apr. 22, 2003.

offered another amendment to replace “coat of arms” with “great seal” on the description of the 1956 flag.¹⁰⁵ Senator Gloria Butler of the 55th district offered an amendment to clarify the 13 stars as “corresponding in number to the 13 original colonies or to that of the Confederate States of America.”¹⁰⁶ Senator Vincent Fort of the 39th district introduced an amendment whereby the Act would become “effective on July 1 of the year in which the General Assembly had expressly appropriated funds sufficient to cover the cost of the referendum elections.”¹⁰⁷ Senator Robert Brown of the 26th district, among others, offered an amendment to correct the sizing issue.¹⁰⁸ Senator Fort, among others, introduced an amendment to explicitly make the referendum “nonbinding.”¹⁰⁹ Senator Horacena Tate of the 38th district, among others, proposed an amendment eliminating the referendum and reverting the flag to the state flag adopted in 1799.¹¹⁰ Other amendments were withdrawn or dismissed as moot with the passage of the Hooks amendment.¹¹¹

The Senate adopted the amended HB 380 by a vote of 36 to 20.¹¹² While the amendments corrected the technical specifications, HB 380 still included the potential for a voter referendum to revert back to the 1956 flag and again required passage in the House.¹¹³

Reconsideration and Final Passage by the House

The debate in the House was scheduled for April 25, 2003, the final day of the longest Georgia General Assembly session in more than a century.¹¹⁴ While many House opponents to HB 380 saw an opportunity to kill the bill, as supporters had feared, others instead sought a compromise to end this issue before the next election

105. See Failed Senate Floor Amendment to HB 380, introduced by Sen. David Adelman, Apr. 22, 2003.

106. See Failed Senate Floor Amendment to HB 380, introduced by Sen. Gloria Butler, Apr. 22, 2003.

107. See Failed Senate Floor Amendment to HB 380, introduced by Sen. Vincent Fort, Apr. 22, 2003.

108. See Failed Senate Floor Amendment to HB 380, introduced by Sen. Robert Brown, Apr. 22, 2003.

109. See Failed Senate Floor Amendment to HB 380, introduced by Sen. Vincent Fort, Apr. 22, 2003.

110. See Failed Senate Floor Amendment to HB 380, introduced by Sen. Horacena Tate, Apr. 22, 2003.

111. See Senate Audio One, *supra* note 87.

112. See Georgia Senate Voting Record, HB 380 (Apr. 22, 2003).

113. See HB 380 (SFA), 2003 Ga. Gen. Assem.

114. Jim Galloway, *Democrats Push for a Single Referendum*, ATLANTA J. CONST., Apr. 24, 2003, at C4, available at 2003 WL 19315022 [hereinafter *Democrats Push*].

year.¹¹⁵ During the week, House Democrats and Republicans met behind closed doors to work out a proposed amendment to the Senate-amended version of HB 380 that would secure the bill's passage in the House.¹¹⁶ The resulting amendment left the 2003 flag design unchanged from the version that passed the Senate but significantly altered the referendum provision.¹¹⁷ The new amendment completely eliminated both the 1956 flag and the pre-1956 flag as options on the referendum.¹¹⁸ The amendment further consolidated the referendum into one purely advisory referendum, where voters could choose between only the newly-enacted flag and the 2001 flag.¹¹⁹

Leading up to the final day of the session, civil rights groups promised an economic boycott of the state if the bill passed without further amendment.¹²⁰ The House voted on adoption of the House amendment to the Senate amendments on April 25, 2003.¹²¹ Debate on the amendment lasted less than 15 minutes.¹²² Representative Richardson expressed his concern that adopting an amendment would once again send HB 380 to the Senate, risking its demise in that chamber.¹²³ Representative Westmoreland cautioned that the new amendment would supplant the compromise bill introduced by the House Committee and “den[y] the people of Georgia” the ability to vote on the several flag options.¹²⁴ The House vote on the adoption of

115. Jim Galloway, *Deal Let Both Sides Dodge Minie Ball*, ATLANTA J. CONST., Apr. 27, 2003, at C6, available at 2003 WL 19315461 [hereinafter *Deal Let Both Sides Dodge Minie Ball*].

116. *Id.* “House Democrats sought an alliance . . . with Senate Republicans to drop the most volatile portion of Gov[ernor] Sonny Perdue’s referendum on the state flag,” and Senate Majority Leader Tom Price stated that he would be willing to go along with a successful effort. *Democrats Push*, *supra* note 114. “[A] biracial group of 70 or so House members, all of whom had voted against the flag referendum on its first visit to the chamber, confronted Speaker Terry Coleman and his leadership team.” *Deal Let Both Sides Dodge Minie Ball*, *supra* note 115. Senator Reed told the press that the Governor’s support for the amendments was obtained in the Senate as a trade-off for votes that the Governor needed to pass his tobacco tax legislation and avoid the need for a special session. However, Governor Perdue denied making any deal. *Id.*

117. Compare HB 380 (SFA), 2003 Ga. Gen. Assem., with HB 380 (HCA), 2003 Ga. Gen. Assem.

118. Compare HB 380 (SFA), 2003 Ga. Gen. Assem., with HB 380 (HCA), 2003 Ga. Gen. Assem.

119. Compare HB 380 (SFA), 2003 Ga. Gen. Assem., with HB 380 (HCA), 2003 Ga. Gen. Assem.

120. Krysten Wyatt, *House Drops Vote on Rebel Flag Emblem*, AUGUSTA CHRON., Apr. 26, 2003, available in Westlaw, GANEWS.

121. See Georgia House of Representatives Voting Record, HB 380 (Apr. 25, 2003).

122. See Audio Recording of House Proceedings, Apr. 25, 2003, at <http://www.ganet.org/services/leg/audio/2003archive.html> [hereinafter House Audio Two].

123. See *id.*

124. See *id.*

this amendment initially resulted in failure by a vote of 89 to 88.¹²⁵ However, the House voted to reconsider the amendment, which ultimately passed by a vote of 91 to 86.¹²⁶ Speaker of the House Terry Coleman provided the necessary 91st vote.¹²⁷ In addition to the Speaker's vote, Representative Bob Hanner of the 133rd district, who voted "no" the first time the House considered this amendment, switched his vote to "yes" on reconsideration.¹²⁸ Representative Hanner asserts that he always fully supported this legislation and that he intended to vote "yes" the first time the House considered the amendment.¹²⁹

The Senate adopted the House amendment that evening by a vote of 33 to 23.¹³⁰ After having passed both chambers of the General Assembly, Governor Perdue signed the bill into law on May 8, 2003.¹³¹

The Act

The Act consists of three key sections.¹³² The first section adopts Representative Bobby Franklin's design as the official flag of the State of Georgia.¹³³ Section one amends Code section 50-3-1.¹³⁴ The second section calls for a single statewide advisory referendum giving voters a choice between retaining the new flag or reverting to the design adopted in 2001.¹³⁵ The third key section provides for severability of any unconstitutional portion of this enactment such

125. See Georgia House of Representatives Voting Record, HB 380 (Apr. 25, 2003).

126. See *id.*

127. See House Audio Two, *supra* note 122.

128. See *id.* Additionally, Representative Twiggs also voted "no" on the first vote but abstained from voting when the House reconsidered the amendment to HB 380. See *id.*

129. See Telephone Interview with Rep. Bob Hanner, House District No. 133 (June 16, 2003).

130. See Georgia Senate Voting Record, HB 380 (Apr. 25, 2003).

131. See 2003 Ga. Laws 26. The Governor believes he satisfied his campaign pledge with this Act, even though the General Assembly made significant changes to his original proposal. See Doug Gross, *Choices Expected to Cool Flag Vote But Some Political Heat Seems Likely*, FLA. TIMES-UNION, Apr. 30, 2003.

132. See O.C.G.A. § 50-3-1 (Supp. 2003).

133. See *id.*

134. See *id.*

135. *Id.* The advisory nature of the referendum avoids any potential constitutional problems, though the Act's severability clause would nonetheless ensure the current flag change remains enforceable. See *supra* note 34; *infra* note 136 and accompanying text.

that the lawful portion remains operative.¹³⁶ Finally, the Act becomes effective when signed into law and repeals all conflicting laws.¹³⁷

An End to the Controversy?

Governor Perdue quickly acknowledged that the “so-called ‘flaggers’ who helped sweep him into office likely would [not] be pleased.”¹³⁸ Southern heritage groups immediately expressed their displeasure and intent to re-address this issue in the next election.¹³⁹ Only time will tell if the Act, and its voter referendum, will finally end the decades-old controversy surrounding the issue.

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136. See O.C.G.A. § 50-3-1 (Supp. 2003).

137. See *id.*

138. See Gross, *supra* note 131.

139. See *id.* “The flap over the state flag has already helped evict one governor from the state capitol, and some observers believe the same fate could befall [Governor] Perdue.” Darryl Fears, *Ga. State Flag Choice Raises Flap, Governor’s Removal of Confederate Battle Banner From Selection Angers Many*, WASH. POST, Apr. 30, 2003, at A3, available at 2003 WL 18821329.