STATE GOVERNMENT New State Flag: Change Design and Description of State Flag; Change Design and Description of State Seal; Provide for the Preservation and Protection of Certain Public Monuments and Memorials; Require Agencies Eligible for Receipt of State Funds to Display State Flag; Limit State Appropriations for Agencies Failing to Comply with Provisions; Provide for Enforcement

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STATE GOVERNMENT

New State Flag: Change Design and Description of State Flag; Change Design and Description of State Seal; Provide for the Preservation and Protection of Certain Public Monuments and Memorials; Require Agencies Eligible for Receipt of State Funds to Display State Flag; Limit State Appropriations for Agencies Failing to Comply with Provisions; Provide for Enforcement

CODE SECTIONS: O.C.G.A. §§ 45-12-83.1 (new), 50-3-1, -30 (amended)
BILL NUMBER: HB 16
ACT NUMBER: 1
GEORGIA LAWS: 2001 Ga. Laws 1
SUMMARY: The Act establishes a new design for the Georgia state flag, replacing the version adopted by the General Assembly in 1956. The Act also slightly modifies the design and description of the state seal; the new great seal is incorporated as a substantial portion of the new flag design. The Act also amends the Georgia Budget Act by requiring those state agencies eligible for the receipt of state funds to display the new flag; those agencies in noncompliance with this mandate are subject to denial of further appropriations. Finally, the Act preserves and protects existing state and local memorials and monuments to military service or personnel, including those involving the Confederate States of America. Specifically, the Act prohibits the removal, relocation or alteration of these types of monuments, including the sculptures graven into the face of Stone Mountain.

EFFECTIVE DATE: January 31, 2001

1. See 2001 Ga. Laws 1, §§ 4-5, at 3. The Act took effect upon approval by the Governor. See id. The new flag was hoisted above the Capitol on the day Governor Roy Barnes signed HB 16 into law. The flag,
History

The Georgia state flag has been at the center of political and social controversy for decades, since the General Assembly incorporated the battle flag of the Confederacy into the design. In 1956, amidst a rising tide of resistance to school desegregation, the General Assembly incorporated the Confederate battle flag into the Georgia state flag. The tumultuous history of the Confederate flag as a symbol of racial oppression stretches back even further, into the Civil War and reconstruction period throughout the South and Georgia.

The Confederate States of America adopted several flags during a short time frame; the Confederate national flag (also known as the “Stars and Bars”) flew over the Georgia Capitol in an unofficial fashion prior to 1879. During the Civil War, the Confederacy adopted a square battle flag depicting a blue St. Andrew’s Cross on a red field. The battle flag included thirteen stars, ostensibly representing the states that made up the Confederacy.
In 1879, the Georgia General Assembly adopted its first official state flag, adopting in large part the stars and bars of the Confederate national flag. The flag included a vertical field of blue on the third of the flag closest to the staff, and three alternating horizontal bands of red and white on the remaining two-thirds of the flag.

The General Assembly again changed the flag design in 1902, by incorporating the great seal of the state into the flag; the new flag included the seal within the vertical field of blue within the 1879 flag; otherwise, the flag remained identical.

As social currents evolved in Georgia, an appreciation for things historically "Southern" rose during the 1930s. In part, the release of Margaret Mitchell’s Gone With the Wind in novel form in 1936, as well as the subsequent movie release in 1939, spurred an interest in the values of the Old South. The Georgia General Assembly soon capitalized on this public sentiment, passing a resolution providing that the Confederate memorial on Stone Mountain near Atlanta, Georgia should be completed. Dissatisfied with the progress on the memorial, the General Assembly soon adopted another resolution urging speedy completion of the monument. In April of 1955, the Chairman of the

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7. Prior to 1879, the Georgia Capitol often raised a flag containing a field of blue, upon which was affixed the state seal; however, the flag was unofficial. See Flags That Have Flown Over Georgia: The History of the Georgia State Flag: Georgia State Flag before 1879 (Unofficial), at http://www.sos.state.ga.us/museum/html/georgia_state_flag_before_1879.htm (visited Apr. 23, 2001).


9. See id.


12. See MARGARET MITCHELL, GONE WITH THE WIND (1936).


14. See Coleman v. Miller, 885 F. Supp. 1561, 1565 (N.D. Ga. 1995) (recognizing that the "wave of interest in southern history and culture" during the time period focused attention on the St. Andrew's Cross design).


State Democratic Party, John Sammons Bell, proposed a redesigned state flag to the County Commissioners Association of Georgia.\(^\text{17}\)

During this time, landmark Supreme Court desegregation decisions\(^\text{18}\) had prompted a massive wave of resistance in most southern states, including Georgia. In fact, a specific Supreme Court decision targeted desegregation of Atlanta's public facilities, including buses, parks, beaches, and swimming pools.\(^\text{19}\) Georgia voters adopted a constitutional amendment allowing parents to withdraw their children from desegregated public schools; the amendment also diverted state funds to nonsectarian, segregated private schools.\(^\text{20}\)

In 1956, Governor Marvin Griffin gave his state of the State address, declaring that "there will be no mixing of races in public schools, in college classrooms in Georgia as long as I am Governor."\(^\text{21}\) Later in the year, in an address to the States' Rights Council of Georgia at the beginning of the 1956 legislative session, Governor Griffin proclaimed that "the rest of the nation is looking to Georgia for the lead in segregation."\(^\text{22}\) Several bills in the 1956 legislative session reflected an underlying resistance to desegregation.\(^\text{23}\)

The so-called interposition resolution\(^\text{24}\) declared that the United States Supreme Court had usurped powers reserved for the states. Namely, the resolution declared that Georgia had the fundamental right to decide how to educate its children; accordingly, the United States Supreme Court decisions in Brown I and II were "null and void."\(^\text{25}\) Days after the resolution passed with only a single dissenting vote, Senator Willis Hardin sponsored a bill to adopt a new flag design incorporating the Confederate battle flag.\(^\text{26}\) Concurrently, the General Assembly was

\(^{17}\) See id. at 1565.

\(^{18}\) The Supreme Court declared racially segregated schools unconstitutional in 1952. See Brown v. Bd. of Educ., 347 U.S. 483 (1954) (Brown I). When state compliance was unsatisfactory, the Court ordered that desegregation was to proceed "with all deliberate speed." See Brown v. Bd. of Educ., 349 U.S. 294, 299 (1955) (Brown II).

\(^{19}\) See Holmes v. City of Atlanta, 350 U.S. 879 (1955).

\(^{20}\) See 1955 Ga. Laws 4, § 1, at 4-5.

\(^{21}\) Coleman v. Miller, 117 F.3d 527, 528 (11th Cir. 1991) (reviewing social environment during 1956 General Assembly flag debates).

\(^{22}\) Id.

\(^{23}\) See infra notes 24-27 and accompanying text.


\(^{25}\) Coleman v. Miller, 885 F. Supp. 1561, 1566 (N.D. Ga. 1995); see also Bein, supra note 3, at 906-07.

\(^{26}\) The law was codified at O.C.G.A. § 50-3-1, the statutory section amended by HB 16.
in the process of adopting several bills and resolutions as part of Governor Griffin's "massive resistance" campaign.\textsuperscript{27}

The floor debates for the 1956 flag bill were noticeably bereft of references to segregation or race relations.\textsuperscript{28} Scattered information available from the Georgia state archives indicates that the debate centered on the "upcoming Civil War centennial, the cost of changing the flag, whether the designer owned a copyright in the flag, and whether, because the Confederate battle flag belonged to all Southern states, it was an appropriate symbol for the state flag of Georgia."\textsuperscript{29} The House vote on the new design was 107-32 in favor of adoption, with 66 abstentions.\textsuperscript{30} The Senate Secretary's report shows only a 41-3 hand count.\textsuperscript{31} Though no outward manifestations of desegregation defiance were recorded, later legal skirmishes indicated there was support for the claim that the new flag was adopted within an atmosphere of defiance.\textsuperscript{32} Inferential evidence that the General Assembly approved the flag change out of hostility toward desegregation abounded in the 1956 legislative session, with numerous bills adopted to hinder or prevent integration outright.\textsuperscript{33}

In the years that followed, the Georgia General Assembly has been the battleground for numerous failed efforts to change the flag design.\textsuperscript{34}

\begin{itemize}
\item \textsuperscript{27} Resolutions adopted by the legislature included HR 243, which provided that no public funds were to be used for integrated schools. See HR 243, 1956 Ga. Gen. Assem. At least ten bills were also adopted along these lines, including the forced forfeiture of any pension by state actors who refused or failed to enforce segregation laws. See Bein, supra note 3, at 906 n.71 (describing bills within 1956 General Assembly hindering integration).
\item \textsuperscript{28} See Opdyke, History Unfurled, supra note 2, at Fl. Despite the absence of any meaningful legislative history, the Coleman trial court found that discriminatory purpose colored the 1956 state flag adoption. Coleman, 885 F. Supp. at 1569. On appeal, the court found it unnecessary to examine this conclusion. See Coleman v. Miller, 117 F.3d 527, 531 n.8 (11th Cir. 1997).
\item \textsuperscript{29} Coleman, 117 F.3d at 529.
\item \textsuperscript{31} See Opdyke, History Unfurled, supra note 2, at Fl; see also Coleman, 117 F.3d at 529 (noting dissenting votes in Senate).
\item \textsuperscript{33} See Joe Dolman, Legislature Raised the Confederate Flag to Chamption Segregation, ATLANTA CONST., Jan. 8, 1988, at A13 (reviewing 1956 legislative session); see also supra notes 24-27 and accompanying text.
\item \textsuperscript{34} See, e.g., Elliot Brack, Design for New State Flag Could Unite Georgians, ATLANTA CONST., Feb. 6, 1995, at J2 (chronicling efforts to change flag in preparation for Atlanta's hosting of 1996 Olympics). Even without world attention brought to Georgia by the Olympics, numerous sessions of the General Assembly included efforts to change the flag design. See Steve Harvey, Changing the State Flag: 'It Needed To Be Done', ATLANTA J. CONST., June 9, 1992, at B1 (outlining legislative efforts to change the flag in 1989 and 1972, as well as Governor Zell Miller's effort to do the same in 1992); Frederick Allen, Change Is in the Wind: Georgia Needs New State Flag Signifying the Present, ATLANTA J. CONST., Apr. 9, 1987, at A23
\end{itemize}
Generally, efforts have dissolved in the face of organized constituent resistance.\textsuperscript{35} Nor has the judiciary stood idly by; federal courts have entertained numerous challenges to the 1956 Georgia flag.\textsuperscript{36} Georgia’s neighbor, South Carolina, also went through a grueling debate concerning the flying of the Confederate flag over its Capitol.\textsuperscript{37} Ultimately, South Carolina removed the flag from atop the State Capitol, relegating it to a museum-like setting nearby.\textsuperscript{38}

Advocates of the 1956 flag design contend that the adoption was to honor the Confederacy and those who fought on its behalf.\textsuperscript{39} Opponents point to the rampant racism surrounding the 1956 change,\textsuperscript{40} as well as post-adoption use of the flag as a symbol of hate.\textsuperscript{41} Regardless of which rationale was the motivation behind the 1956 adoption, it is indisputable that the flying of the flag has produced much political controversy\textsuperscript{42} and social strife.\textsuperscript{43}

(chronicling Governor Joe Frank Harris’ postponement of flag controversy in face of Atlanta’s 1988 hosting of Democratic National Convention).

35. Georgia had another racially-charged political battle regarding the adoption of Martin Luther King, Jr.’s birthday as a state holiday. The General Assembly had a vigorous debate over the issue, often recounted during the floor debates for the flag issue. See Audio Recording of House Proceedings, Jan. 24, 2001 (remarks by Governor Roy E. Barnes), at http://www.state.ga.us/services/leg/audio/2001archive.html [hereinafter House Audio].

36. See, e.g., Coleman v. Miller, 117 F.3d 527 (11th Cir. 1997) (rejecting challenges to Georgia flag on equal protection and First Amendment grounds). Other states flying the Confederate flag have been party to spirited litigation on a variety of constitutional grounds. See NAACP v. Hunt, 891 F.2d 1555 (11th Cir. 1990) (rejecting challenge to Alabama’s flying flag over state capitol on First, Thirteenth, and Fourteenth Amendment grounds); Miss. Div. of United Sons of Confederate Veterans v. Miss. State Conference of NAACP Branches, 774 So. 2d 388 (Miss. 2000) (rejecting challenges to flag on free speech, due process, and equal protection grounds); Daniels v. Harrison County Bd. of Supervisors, 722 So. 2d 136, 139 (Miss. 1998) (holding that flying of the Confederate flag does not serve to “deprive any citizens of this State of any constitutionally protected right”).

37. See L. Darnell Weeden, How to Establish Flying the Confederate Flag with the State as a Sponsor Violates the Equal Protection Clause, 34 AKRON L. REV. 521, 522 (2001) (“The controversy has pitted blacks against whites, Republicans against Democrats, and conservatives against liberals, just as the Civil War did more than a century ago.”).

38. The removal came after months of controversy including nationally-organized marches and economic boycotts. See Mike Jones, Flag Flap: Georgia Makes the Right Decision, TULSA WORLD, Feb. 4, 2001, at 3.


40. See supra notes 19-33 and accompanying text.

41. See Bein, supra note 3, at 920. White supremacist groups have particularly embraced the Confederate battle flag as a divisive symbol. See Daniels v. Harrison County Bd. of Supervisors, 722 So. 2d 136 (Miss. 1988) (Bank., J., specially concurring).

42. See House Audio, supra note 35 (remarks by Governor Roy E. Barnes) (“This is the most divisive issue in the political spectrum and it must be put to rest.”).

43. See id. (remarks by Governor Roy E. Barnes) (classifying the ongoing flag issue as a danger to social progress, race relations, and economic growth of Georgia).
After the bruising political battle faced by South Carolina, Georgia became a target of economic boycott threats due to the inclusion of the Confederate battle symbol in its official state flag. Given the South Carolina decision to significantly downgrade the role of the Confederate battle flag, pressure mounted for Georgia to follow suit. Given the polarization potential for the issue, most legislators approached the issue in a non-election year with considerably more open minds than in the prior year.

**HB 16**

*Introduction to the House*

Representative Tyrone Brooks of the 54th District pre-filed LC 19-4812 on November 27, 2000. The bill had two subdivisions: initially, the proposed legislation would adopt as the new state flag the version previously adopted by the General Assembly in 1879. Additionally, the 1956 flag would officially be designated the “Georgia Memorial Flag” and displayed as such in the State Capitol and other museums.

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46. See Pruitt, Flag Issue, supra note 45, at D1. Ranking House Democrats apparently avoided the political minefield of the flag during the 2000 election year, but looked toward “building a coalition for business, political and civic leaders to lead and give political cover to flag-changing efforts in the 2001 General Assembly.” Id.

47. See House of Representatives Pre-Filing Authorization for LC 19-4812, Nov. 27, 2000 (on file with the Georgia State University Law Review); see also Brooks Interview, supra note 44.

48. See HB 16, as introduced, 2001 Ga. Gen. Assem. Representative Brooks initially favored the pre-1956 flag design as a type of compromise. As the 1879 flag represented the Confederate national flag, Brooks hoped to appeal to pro-Confederate lawmakers as well as those wishing to see the St. Andrew’s Cross portion of the flag eliminated. See Brooks Interview, supra note 44.

49. See Brooks Interview, supra note 44.
Once the 2001 legislative session began, Representative Brooks introduced the same bill to change the state flag design. Representative Tyrone Brooks, Calvin Smyre, Kathy Ashe, Carl Von Epps, and Maretta Mitchell Taylor of the 54th, 136th, 46th, 131st, and 134th Districts, respectively, sponsored HB 16. The House referred the bill to its Rules Committee on January 9, 2001. The referred HB 16 was identical to the version pre-filed by Representative Brooks the previous November. The House Rules Committee favorably reported a committee substitute on January 24, 2001, essentially redrafting the bill as a "compromise" flag design. The full House of Representatives adopted the Rules Committee substitute, along with three amendments, on the same day. On January 25, 2001, the Senate assigned the bill to its State and Local Government Operations Committee. The Committee favorably reported the bill on January 26, 2001. The full Senate debated the bill on January 30, 2001; all floor amendments failed. The Senate adopted the bill on January 30, 2001. Governor Roy Barnes signed the bill into law on January 31, 2001.

Consideration by House Rules Committee

Upon referral, the House Rules Committee considered HB 16 on January 24, 2001. The Rules Committee substitute, introduced by Majority Leader Larry Walker, significantly changed HB 16. While the initial version of the legislation would have changed the flag to the

50. Id. Representative Brooks had previously introduced versions of HB 16 in several legislative sessions. See House Audio, supra note 35 (remarks by Rep. Tyrone Brooks).
55. See Georgia House of Representatives Voting Record, HB 16 (Jan. 24, 2001); State of Georgia Final Composite Status Sheet, HB 16, Mar. 21, 2001; see also House Audio, supra note 35 (vote on amendments and full House vote).
58. See Georgia Senate Voting Record, HB 16 (Jan. 30, 2001).
60. See id.
61. See id.
1879 version, the Committee substitute included a wholly new design based upon a compromise between total elimination of the Confederate battle flag and retention of the 1956 flag.63 The proposed compromise flag included a solid field of blue framing the Great Seal of the state in the center.64 The Seal was to be encircled by thirteen white stars.65 Underneath the seal was to be a small banner, encapsulating several of Georgia’s past flags, including the 1956 version.66

Perhaps the most noteworthy portion of the Committee debate was the testimony of Denmark Groover in support of HB 16, as amended.67 Then-Representative Groover had spoken out during the 1956 General Assembly debates, indicating that changing the flag “will show that we in Georgia intend to uphold what we stood for, will stand for, and will fight for.”68 By many accounts, Groover’s speech to a crowded Rules Committee room demonstrated the compelling moral need to rectify the atmosphere of racism that pervaded the 1956 flag debates.69 Original HB 16 co-sponsor Calvin Smyre, the Chairman of the Rules Committee, quickly lent his support to the Committee substitute in a show of conciliation.70 The bill, per the Committee substitute, passed by unanimous vote and went to the full House of Representatives on January 10, 2001.71

65. See id.
66. See id. The smaller flags, representing various flags that have flown in the state, were against a background ribbon of gold emblazoned with the words “Georgia’s History.” The flags included, from left to right, the original United States flag as adopted by the Continental Congress in 1777; the pre-1879 unofficial flag of Georgia, consisting of a blue background framing the state seal; the Georgia state flag as adopted in 1902; the Georgia flag as adopted in 1956; and finally, the current United States flag. See HB 16 (HCS), 2001 Ga. Gen. Assem.
67. Denmark Groover was the Floor Leader in the House of Representatives in 1956, during the adoption of the Confederate flag design into the state flag. See House Audio, supra note 35 (remarks by Rep. Larry Walker). Groover rallied support for the compromise design by declaring it was “time to act”; Groover also elaborated at length on the underlying defiance toward desegregation that pervaded the 1956 flag adoption. Id.; see also James Galloway, Denmark Groover, Jr.: Legislator Twice Instrumental in Changing State Flag Design, ATLANTA J. CONST., Apr. 19, 2001, at F1 (characterizing Groover’s speech before the Rules Committee as a “crucial endorsement” of Governor Barnes’ effort to change the flag).
68. See Auchtman, supra note 6, at M8.
69. See Ashe Interview, supra note 44.
House Floor Debate and Passage

Governor Roy E. Barnes shepherded the Committee substitute version of HB 16 onto the House floor on January 10, 2001. Barnes' moving remarks are regarded by many as the crucial factor in winning the final votes for HB 16. The Governor explained that the compromise version of the flag would satisfy both the need to diminish the significance of the tainted 1956 version, while preserving Georgia's entire heritage with the inclusion of the historical flags.

Barnes cited Georgia's promising economic future and the need for moral leadership in support of the Committee substitute. He cautioned that the "eyes of the nation and the world are on us" and that failure to adopt the compromise would cause Georgia to "slip into the morass of past recriminations."

After the Governor exited, Representative Calvin Smyre formally introduced the Committee substitute to the House. The hours of House debate were heartfelt; the statements by Representatives exemplified the divisive nature of the hate and heritage aspects of the flag issue. Another common issue for discussion was the expediency of the push for the bill; most legislators voted on the compromise version of the flag only hours after seeing it for the first time.

Several Representatives proposed floor amendments to the Committee substitute of HB 16. Many never proceeded to a floor vote. Representative Arnold Ragas proposed that the "Georgia's..."
History” banner and all the flags represented be eliminated, essentially reducing the compromise version into the unofficial version of the flag that Georgia flew prior to 1879. Representative Ken Birdsong also proposed an amendment to HB 16, suggesting that every state agency eligible to receive state funds should be required to fly the compromise version of the flag. Rules Committee Chairman and HB 16 co-sponsor Calvin Smyre spoke in favor of Birdsong’s amendment; the proposal was adopted without opposition.

Representative Fran Millar proposed an amendment to slightly alter the Great Seal of the state, which would be included on the new flag design and elsewhere within state documents, buildings, and memorials. The amendment, like the Birdsong amendment, was adopted without opposition and without a recorded vote.

The final successful floor amendment to HB 16 was proposed by Representative James Mills. The amendment added the words “In God We Trust” to the new flag design, below the historical banner illustrating previous flag designs. The amendment, subject to a

84. See Georgia House of Representatives Voting Record, HB 16 (Jan. 24, 2001).
86. See House Audio, supra note 35 (remarks by Rep. Calvin Smyre); see also Telephone Interview with Scotty Long, Assistant Journal Clerk, Georgia House of Representatives (June 25, 2001) [hereinafter Long Interview]. Some votes on the House floor, particularly on amendments, are noncontroversial and adopted without an official vote tally. The Birdsong amendment was one such vote. See Brooks Interview, supra note 44.
counted floor vote, passed by a margin of 102 to 67.90 In total, three amendments to the Rules Committee substitute were adopted.91 The final vote for the Committee substitute, as amended, took place on January 24, 2001.92 The vote was 94 to 82 in favor of the compromise version of the bill.93 The House sent the bill as amended to the Senate the same day.94

Consideration by Senate Committee on State and Local Government Operations

On January 25, 2001, the Senate Committee on State and Local Government Operations took up discussion of HB 16 as approved by the House.95 The vote to approve the bill was 4-3, along strict party lines. Committee Chairwoman Nadine Thomas, a Democrat from the 10th District, cast the tie-breaking vote.96

Senate Floor Debate and Passage

Senate President Mark Taylor began the Senate debate on the compromise version of the flag bill on January 25, 2001.97 Governor Barnes also made opening remarks, quoting Abraham Lincoln, Winston Churchill, and various communications from Georgia citizens specific to the flag issue.98 Nearly one-half of the members of the Senate came forward to speak to the bill.99

90. See Georgia House of Representatives Voting Record, HB 16 (Jan. 24, 2001). Representative Mills, a Republican, may well have fundamentally altered the floor vote through his amendment. Several House Republicans reportedly switched their votes after the amendment, giving HB 16 the necessary majority for passage. See Lawmaker Proposes New Motto AUGUSTA CHRON., Jan. 28, 2001, at B4 (quoting remarks by Rep. Calvin Smyre).
92. See generally House Audio, supra note 35 (voting on final version of HB 16).
93. See Georgia House of Representatives Voting Record, HB 16 (Jan. 24, 2001); see also Cook, Will It Fly?, supra note 88, at A1 (chronicling quick treatment of HB 16 in House of Representatives). In terms of partisanship, 78 House Democrats voted for the change, along with 16 Republicans. Voting against the change were 55 Republicans, 26 Democrats, and 1 Independent. See id.
95. See id.
97. See Senate Audio, supra note 56 (remarks by Sen. Mark Taylor). Taylor stressed that the vote was one of "real economic significance" and that the bill would allow Georgia to "embrace our history but shun the disagreeable heritage." Id.
98. Id. (remarks by Governor Roy E. Barnes).
99. See generally Senate Audio, supra note 56 (various remarks by senators).
Legislative Review

Senator Mike Crotts of the 17th District, along with several of his colleagues, proposed an amendment to allow for a non-binding statewide referendum on the flag issue. In prior legislative sessions, other senators and representatives had proposed binding referendums on the flag; the Georgia Attorney General's Office had also issued an advisory opinion that a similar referendum would be unconstitutional.\(^{100}\) Other senators spoke out against the amendment, citing the need to take responsibility and face the divisive issue directly.\(^{101}\) The amendment was ruled improper by the President of the Senate; a voice vote failed to overrule that decision.\(^{102}\)

A second proposed floor amendment, by Senator Thomas Price of the 56th District, would have appointed a thirty-nine-member commission on flag unity.\(^{103}\) The Commission would have been bound to an August 1, 2002 deadline for crafting a compromise solution in full view of the Georgia citizenry.\(^{104}\) The amendment failed by a vote of 24 to 32.\(^{105}\)

The floor debate centered on concerns largely explored in the House debate of six days prior. Hotly contested issues included the heritage or hate debate,\(^{106}\) the economic implications of the flag change,\(^{107}\) the impropriety of such major legislation within a short time-frame,\(^{103}\) and

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100. See 93 Op. Att'y Gen. 5 (1993) (finding that conditioning validity of statute on statewide referendum is unconstitutional abdication of legislative power). Though Sen. Crotts' proposed referendum would have been non-binding, several senators knew of the Attorney General's opinion and commented on it during the floor debates. See Senate Audio, supra note 56 (remarks by Sens. George Hooks and Sonny Purdue). The House floor debates included a similar proposed amendment, which never reached a vote. See House Audio, supra note 35 (remarks by Rep. Chuck Sims).


102. See Senate Audio, supra note 56 (vote to overrule Senate President's decision declaring Crotts' amendment improper). The vote to overrule the chair failed by a count of 23 to 33. See Georgia Senate Voting Record, HB 16 (Jan. 30, 2001).


104. The amendment was proposed largely as a protest measure to the swiftness of Governor Barnes' push of HB 16. See Senate Audio, supra note 56 (remarks by Sen. Thomas Price).

105. See id. (vote on Price amendment).

106. See id. (remarks by Sen. Vincent Fort) (arguing that allegations of 1956 segregationist motives are exaggerated). Generally, Senate Democrats spoke in favor of unity and bringing the state's citizens together; the potential economic risks in not changing the flag also played a large role in the debate. See generally Senate Audio, supra note 56. Senator Rene' Kemp of the 3rd District gave a particularly detailed statement regarding the campaign of massive resistance led by Governor Griffin during the 1956 General Assembly session. See id. (remarks by Senator Rene' Kemp). Senator Charles Walker called the flag the "last remaining issue" that divided Georgians. Id. (remarks by Sen. Charles Walker).


108. See id. (remarks by Sens. Tommie Williams, Thomas Price, and David Scott).
possible future attacks on other Confederate monuments. The final Senate vote on the new flag, 34-22 in favor of passage, was hardly a bipartisan effort. Approximately ninety percent of Senate Democrats supported the compromise version of the bill, while seventy-five percent of Senate Republicans opposed it.

The Act

The centerpiece of the Act is Section 1, which amends Code section 50-3-1 to provide for the new flag design and description. Subsection 1(a) outlines the new flag design in detail and eliminates the 1956 flag design. The portion of Code section 50-3-1 requiring representation of the state flag by military units during parades or review remains intact.

In addition, Section 1(b) adds new language to section 50-3-1 concerning military monuments and memorials. Subsection 1(b)(1) criminalizes the defacing, mutilation, or abuse of any such monument, including those dedicated to military personnel of the Confederate States of America, by making such action a misdemeanor. The subsection also prohibits any removal, alteration or concealment of such monuments by any state or local government agency.

Subsection 1(b)(2) extends the same prohibition on removal, alteration and concealment to all monuments located on publicly-owned property throughout the state. The subsection provides an exemption for preservation and protection activities undertaken by state or local actors.

111. Compare 2001 Ga. Laws 1, § 1, at 1-3.
Subsection 1(b)(3) provides for judicial enforcement of the prohibitions in subsection 1(b), allowing for an injunction on such alterations upon proper application.\(^{119}\)

In a specific provision, subsection 1(c) prohibits the alteration, removal, or concealment of the Confederate carvings on the face of Stone Mountain.\(^{120}\) The subsection further declares that the carvings shall be protected for "all time" as a tribute to the citizens of Georgia who fought on behalf of the Confederacy.\(^{121}\)

Section 2 of the Act amends the Georgia Budget Act by adding Code section 45-12-83.1, to provide that every agency eligible to receive state funds must display the new flag design as outlined in section 1(a).\(^{122}\) "Agency" is broadly defined in subsection 2(a) as every state department, agency, county, city, or other political subdivision.\(^{123}\) Subsection 2(b) makes receipt of any state funds by these entities conditional upon display of the flag.\(^{124}\) The subsection further provides that the State Office of Planning and Budget shall investigate any noncompliance with the new Code section 45-12-83.1.\(^{125}\) Additionally, subsection 2(b) vests dual enforcement power over the fund-conditioning provisions with the Office of Planning and Budget and the Office of Treasury and Fiscal Services.\(^{126}\)


\(^{122}\) Compare 1962 Ga. Laws 17, § 1, at 29 (formerly found at O.C.G.A. § 45-12-83 to -84 (1990)), with O.C.G.A. § 45-12-83.1 (Supp. 2001). Previously, the Georgia Budget Act had no provisions conditioning receipt of state funds to flying the state flag, though several other conditions were in place. See, e.g., 1962 Ga. Laws 17, § 1, at 28-293 (codified at O.C.G.A. § 45-12-82(1990)) (conditioning receipt of state monies on filing of quarterly work plans).

\(^{123}\) See O.C.G.A. § 45-12-83.1 (Supp. 2001); see also HB 16 (HCSFA), 2001 Ga. Gen. Assem., at § 2(a).

\(^{124}\) See O.C.G.A. § 45-12-83.1 (Supp. 2001); see also HB 16 (HCSFA), 2001 Ga. Gen. Assem., at § 2(b).

\(^{125}\) See O.C.G.A. § 45-12-83.1 (Supp. 2001); see also HB 16 (HCSFA), 2001 Ga. Gen. Assem., at § 2(b).

\(^{126}\) See O.C.G.A. § 45-12-83.1 (Supp. 2001); see also HB 16 (HCSFA), 2001 Ga. Gen. Assem., at § 2(b).
Section 3 of the Act amends Code section 50-3-30 by making small changes in the great seal of the state. The altered description of the state seal is included within the new flag design, as outlined in subsection 1(a) of the Act.

Opposition to HB 16

Governor Barnes drew significant fire from Republicans in the procedural arena, as the swift push of HB 16 through both houses produced a backlash from those championing the cause of compromise. Substantive 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. Lawmakers from rural Georgia districts in particular criticized the bill for denigrating the state's heritage and Confederate history. Civil rights activists countered that any inclusion of the 1956 flag on the compromise version would still allow for abuse by racist and other incendiary groups.

The concerns voiced during the week-long adoption process lingered after Governor Barnes signed HB 16 into law. Many civil rights

128. See O.C.G.A. 50-3-30 (Supp. 2001); see also HB 16 (HCSFA), 2001 Ga. Gen. Assem., at § 3.
129. According to pundits, the swiftness surrounding the push of HB 16 through both House and Senate reverberated throughout the remainder of the 2001 Legislative session. See Larry Hartstein, Legislative Session Seen As Positive for County, But Overall, Term Considered 'Slow', ATLANTA J. CONST., Mar. 23, 2001, at 11 (“There was a dramatically different pace this session. It started off with the first week to 10 days consumed by the flag issue, which pushed everything else back.”) (quoting Rep. Jeff Williams); see also Kathey Pruitt, 2001 Georgia Legislature: Barnes' First Defeat 'Just a Matter of Time'—Governor's Loss of Teen Driving Law in Final Hours Proves He's Not Politically Invincible After All, ATLANTA J. CONST., Mar. 23, 2001, at C1 [hereinafter Pruitt, Barnes] (“Lawmakers in both parties privately say after the politically exhausting flag vote, some of them weren't eager to go out on a limb again on another controversial issue like teen driving restrictions.”).
132. See Senate Audio, supra note 56 (remarks by Sen. Tommie Williams); House Audio, supra note 35 (comments by Rep. Arnold Ragas in support of amendment to remove all historical flags from compromise version).
activists remain unsatisfied with the compromise flag. Other Confederate history buffs fear that despite the language in the Act, other Civil War memorials are at risk from future General Assemblies. Conversely, many continue to believe that the diminution of the Confederate emblem on the new design simply dishonors the Confederate soldiers who fought under it.

The opposition to changing the flag design was undoubtedly hampered by Governor Barnes’ surprise introduction of the compromise bill. In the weeks that followed the passage of HB 16, the majority of public controversy surrounding the debate largely evaporated. Nonetheless, small actions of defiance arose on both the county and individual levels. In the larger political arena, state Republicans have made clear that the flag issue will be revisited in the 2002 gubernatorial elections.

Darren Summerville

131. See Colin Campbell, The Georgia Flag Debate: A Newcomer’s Guide, ATLANTA J. CONST., Jan. 21, 2001, at B7 (“[D]efenders of the flag... paint alarming scenarios, often suggesting that changing the Georgia flag would be sliding down a slippery slope.”). But see House Audio, supra note 35 (remarks by Rep. Tyrone Brooks). Governor Roy E. Barnes has followed up on promises made to Confederate loyalists during the flag debates. The Governor had previously announced his intention to restore a large portrait of General Robert E. Lee to a prominent location in the State Capitol; he made good on the promise in a ceremony several months after the final flag vote. See Dave Williams, Portrait of Lee Recaptures Spot on Capitol Wall, AUGUSTA CHRON., Apr. 27, 2001, at C2.
135. See Chapman, supra note 130, at H1. Interestingly, in the wake of the new flag compromise, the state Senate passed a resolution encouraging residents to fly the 1956 version during the April 2001 Confederate History and Heritage month. See SR 464, as passed, 2001 Ga. Gen. Assem.; see also Metro, AUGUSTA CHRON., Mar. 20, 2001, at C7. The legislation could be interpreted as a gesture of goodwill to those who opposed the flag, or as political cover for those who chose to vote for the change despite constituency rallies against the new design.
137. See Pruitt, Barnes, supra note 129, at C1.
138. See Plott Brice, County’s Plan for New Old’ Flag Tabled, ATLANTA CONST., Apr. 11, 2001, at C3 (outlining the proposed Banks County Commission plan to adopt the 1956 state flag as the “county flag” in aftermath of the General Assembly debate); Don Lowery, Old Banner Gets Ok’d for Display; Governor’s Office Says Effingham County Can Still Show Off Former Flag Inside; New One Must Fly Outside, AUGUSTA CHRON., May 8, 2001, at C6 (citing Governor’s approval of historic display of 1956 flag inside Effingham County Administrative Complex).
139. See Russ Bynum, Confederate Images Identify New, Younger Southern Rebel, SAN DIEGO UNION-TRIB., Apr. 7, 2001, at A10 (describing Georgia students protesting flag change by wearing of prohibited rebel emblem T-shirts).