



SENATE BILL 22: Historic Artifact Management and Patriotism Act

2015-2016 General Assembly

Committee:
Introduced by:
Analysis of: S.L. 2015-170

Date:
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SUMMARY: *S.L. 2015-170 does the following:*

- *Establishes laws for the handling, display, storage and retirement of both the United States and the North Carolina flags by State agencies and other political subdivisions of the State.*
- *Requires the Division of Veterans Affairs to establish a flag retirement program.*
- *Provides for the protection of certain monuments on public property by prohibiting their permanent removal and limiting the circumstances under which they may be relocated.*
- *Requires the Secretary of State to transfer the historical editions of the State Constitution and certain other documents to the Department of Cultural Resources.*
- *Requires the Department of Cultural Resources, in 2016, to arrange programs and public displays of the North Carolina and United States Constitutions and their amendments and related documents.*

The requirement that the Secretary of State transfer certain documents to the Department of Cultural Resources became effective December 1, 2015. The remainder of this act became effective July 23, 2015.

HANDLING OF THE UNITED STATES AND NORTH CAROLINA FLAGS

CURRENT LAW: Chapter 144 of the General Statutes identifies the characteristics of the official North Carolina flag and sets out the requirements as to when the flag should be displayed in and on public buildings. It also provides that the preferred method for retiring a State flag no longer fit for display is by fire.

Federal guidelines related to the treatment of the United States flag are contained in Chapter 1, Title 4 of the United States Code, which is commonly referred to as the Flag Code (Code). The Code includes instruction and rules on topics such as the pledge of allegiance, display and use of the flag by civilians, time and occasions for display, position and manner of display, and how to show respect for the flag. The Code also grants to the President the authority to modify the rules governing the flag. The Code is designed for the use of civilian groups or organizations, which are not necessarily required to conform to regulations promulgated by one or more executive departments of the federal government. The Code does not prescribe any penalties for non-compliance, nor does it include enforcement provisions; rather, the Code functions as a guide to be voluntarily followed by civilians and civilian groups.

Like North Carolina law, the federal Code provides that when a flag is no longer a fitting emblem for display, it should be destroyed in a dignified way, preferably by burning. Organizations including the American Legion, the Veterans of Foreign Wars, the Boy Scouts of America, and the Girl Scouts of the USA conduct flag retirement ceremonies.



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BILL ANALYSIS:

Handling of Flags

Section 2(a) requires State agencies and other political subdivisions of the State to handle, display, and store North Carolina and United States flags in accordance with the United States Flag Code.

Retirement of Flags

Section 2(b) does two things. First, it permits State agencies and other political subdivisions of the State to deliver North Carolina and United States flags to the Division of Veterans Affairs when ready for retirement. The Division is responsible for accepting and arranging for the flags' respectful disposal.

Second, it requires the Division to establish a flag retirement program in which citizens could, at no cost, send in or drop off flags at certain locations.¹ The Division must advertise the program and on or before December 31, 2016, and annually thereafter, report the number of flags it receives to the Joint Legislative Committee on Governmental Operations.

PROTECTION OF MONUMENTS

CURRENT LAW: Before a memorial or work of art may become property of the State, it must be approved by the North Carolina Historical Commission. The Historical Commission consists of 11 members appointed by the Governor. No existing memorial or work of art owned by the State may be removed, relocated, or altered in any way without approval of the North Carolina Historical Commission. Local governments may, by ordinance, designate historic landmarks within their jurisdiction. To be so designated, the local preservation commission must determine that the landmark is of special significance in terms of its historical, prehistorical, architectural, or cultural importance.

BILL ANALYSIS: **Section 3** creates a subset of monuments and memorials located on State property or on local government property referred to as "objects of remembrance" and prohibits their permanent removal and limits their relocation.

Object of Remembrance Defined. – The limitations apply to an "object of remembrance," defined as a monument, memorial, plaque, statue, marker, or display of a permanent character that commemorates an event, person, or military service that is part of North Carolina's history.

Permanent Removal Prohibited. – The State or a political subdivision of the State is prohibited from permanently removing an object of remembrance located on public property. There are two main exceptions: (1) when the object poses a threat to public safety because of an unsafe or dangerous condition, and (2) if an object is privately owned and is the subject of a private legal agreement governing its removal or relocation.

Relocation Limited. – An object of remembrance may only be relocated, either temporarily or permanently, under the following circumstances:

- When necessary to take measures required to preserve the object.
- When necessary for the construction, renovation, or reconfiguration of buildings, open spaces, parking, or transportation projects.

If the relocation is temporary, it must be returned to its original location within 90 days of the completion of the project that required its temporary relocation.

¹ Locations include the Division's Raleigh office and its Veterans Homes and Cemeteries. The Homes are located in Fayetteville, Salisbury, Kinston, and Black Mountain. The Cemeteries are located in Jacksonville, Spring Lake, and Black Mountain with one under construction in Goldsboro.

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If the relocation is permanent, it must be relocated to a site of similar prominence, honor, visibility, availability, and access that are within the boundaries of the jurisdiction from which it was relocated.

An object of remembrance may not be relocated to a museum, cemetery, or mausoleum unless it was originally placed at such a location.

TRANSFER OF HISTORIC DOCUMENTS

CURRENT LAW: It is the duty of the Secretary of the State to receive, enroll, and preserve the State Constitution and all amendments.

BILL ANALYSIS:

Transfer of Documents

Sections 4(b) requires the Secretary of State to transfer to the Department of Cultural Resources, by December 1, 2015, all previously adopted editions of the State Constitution and amendments thereto and ratified amendments to the U.S. Constitution. This section further provides that the Department of Cultural Resources may request on-site access to review documents within the possession of the Secretary of State to determine their historical significance. If the Department identifies documents that are no longer legally necessary to remain in the possession of the Secretary, the Secretary must transfer the documents to the Department for preservation and safekeeping in the State Archives. The Secretary will receive copies of all documents transferred.

Section 4(a) modifies the duties of the Secretary of State to reflect the changes under this act. Specifically, the Secretary will continue to receive, enroll, and preserve the currently adopted edition of the State Constitution and all of its amendments but will transfer previous editions and amendments to those editions to the Department of Cultural Resources.

2016 Displays and Programs

Section 4(c) requires the Department, in 2016, to arrange programs and public displays of the North Carolina and United States Constitutions and their amendments and related documents to commemorate the 240th anniversaries of the signing of the Declaration of Independence and the ratification of North Carolina's first Constitution. The Department is authorized to participate in certain fundraising methods.