

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 107

Short Title: Abandoned Cemeteries. (Public)

Sponsors: Representatives Justus, Spear, Johnson, E. Warren (Primary Sponsors);
Brubaker, Church, Coates, Crawford, Cunningham, England, Frye, Gulley,
Haire, Hill, Holliman, Howard, Hurley, Kiser, Langdon, Lewis, Love,
Lucas, McElraft, McGee, Pate, Rapp, Ray, Ross, Steen, Sutton, Tucker,
Underhill, Wainwright, Walker, R. Warren, West, Womble, and Wray.

Referred to: Rules, Calendar, and Operations of the House.

February 8, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE STATUTES RELATING TO ABANDONED AND
3 NEGLECTED CEMETERIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 65 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 12.

8 "Abandoned and Neglected Cemeteries.

9 "Part 1. General.

10 "**§ 65-85. Definitions.**

11 As used in this Article, the following terms mean:

- 12 (1) Abandoned. – Ceased from maintenance or use by the person with
13 legal right to the real property with the intent of not again maintaining
14 the real property in the foreseeable future.
15 (2) Cemetery. – A tract of land used for burial of multiple graves.
16 (3) Department. – The Department of Cultural Resources.
17 (4) Grave. – A place of burial for a single decedent.
18 (5) Neglected. – Left unattended or uncared for through carelessness or
19 intention and lacking a caretaker.
20 (6) Public cemetery. – A cemetery for which there is no qualification to
21 purchase, own, or come into possession of a grave in that cemetery.

22 "**§§ 65-86 through 65-90: Reserved for future codification purposes.**

23 "Part 2. Trust Funds for Care of Cemeteries.

24 "**§ 65-91. Money deposited with the clerk of superior court.**

1 For the maintenance and preservation of abandoned or neglected graves or
2 abandoned or neglected cemeteries, any person, firm, or corporation may, by will or
3 otherwise, place in the hands of the clerk of the superior court of any county in the State
4 where such grave or lot is located any sum of money not less than five thousand dollars
5 (\$5,000), the income from which is to be used for keeping in good condition the
6 abandoned or neglected grave or the abandoned or neglected cemetery with specific
7 instructions as to the use of the fund.

8 **"§ 65-92. Separate record of accounts to be kept.**

9 It shall be the duty of the clerk of the superior court to keep a separate record for
10 keeping account of the money deposited as above provided, to keep a perpetual account
11 of the same therein, and to record therein the specific instructions about the use of the
12 income on such money. The clerk shall see that the income is spent according to such
13 specific instructions and shall make report of the same from year to year in the same
14 manner as if it were guardian funds.

15 **"§ 65-93. Funds to be kept perpetually.**

16 All money placed in the office of the superior court clerk in accordance with this
17 Part shall be held perpetually, or until such time as the balance of the trust corpus falls
18 below one hundred dollars (\$100.00), at which time the trust shall terminate, and the
19 clerk shall disburse the remaining balance as provided in G.S. 36A-147(c). Except as
20 otherwise provided herein, no one shall have authority to withdraw or change the
21 direction of the income on same.

22 **"§ 65-94. Investment of funds.**

23 Such money shall be invested in the same manner as is provided by law for the
24 investment of other trust funds by the clerk of the superior court.

25 **"§ 65-95. Clerk's bond and fees; substitution of bank or trust company as trustee.**

26 The official bond of the clerk of the superior court shall be liable for all such sums
27 as shall be paid over to the clerk on account of the provisions of this Part. In lieu of the
28 provisions of this section, the clerk may appoint any bank or trust company authorized
29 to do business in this State as trustee for the funds authorized to be paid into his office
30 by virtue of this Part; provided, that no bank or trust company shall be appointed as
31 such trustee unless such bank or trust company is authorized and licensed to act as
32 fiduciary under the laws of this State.

33 Before any clerk shall turn over such funds to the trustee so appointed, the clerk
34 shall require that the trustee so named qualify before the clerk as such trustee in the
35 same way and manner and to the same extent as guardians are by law required to so
36 qualify. After such trustee has qualified as herein provided, all such funds coming into
37 the clerk's hands may be invested by it only in the securities set out in G.S. 7A-112 and
38 the income therefrom invested for the purposes and in the manner heretofore set out in
39 this Part. All trustees appointed under the provisions of this Article shall render and file
40 in the office of the clerk of the superior court all reports that are now required by law of
41 guardians.

42 **"§ 65-96. Funds exempt from taxation.**

43 All money referred to in the preceding sections of this Article shall be exempt from
44 all State, county, township, town, and city taxes.

1 **"§§ 65-97 through 65-100: Reserved for future codification purposes.**

2 "Part 3. Access to and Maintenance of Abandoned or Neglected Cemeteries.

3 **"§ 65-101. Entering public or private property to maintain or visit with consent.**

4 Any of the following persons, with the consent of the public or private landowner,
5 may enter the property of another to discover, restore, maintain, or visit a grave or
6 abandoned public cemetery:

7 (1) A descendant of the person whose remains are reasonably believed to
8 be interred in the grave or abandoned public cemetery.

9 (2) A descendant's designee.

10 (3) Any other person who has a special personal interest in the grave or
11 abandoned public cemetery.

12 **"§ 65-102. Entering public or private property to maintain or visit without**
13 **consent.**

14 (a) If the consent of the landowner cannot be obtained, any person listed in
15 G.S. 65-101(1), (2), or (3) may commence a special proceeding by petitioning the clerk
16 of superior court of the county in which the petitioner has reasonable grounds to believe
17 the grave or abandoned public cemetery is located for an order allowing the petitioner to
18 enter the property to discover, restore, maintain, or visit the grave or abandoned public
19 cemetery. The petition shall be verified. The special proceeding shall be in accordance
20 with the provisions of Articles 27A and 33 of Chapter 1 of the General Statutes. The
21 clerk shall issue an order allowing the petitioner to enter the property if the clerk finds
22 all of the following:

23 (1) There are reasonable grounds to believe that the grave or abandoned
24 public cemetery is located on the property or that it is reasonably
25 necessary to enter or cross the landowner's property to reach the grave
26 or abandoned public cemetery.

27 (2) The petitioner, or the petitioner's designee, is a descendant of the
28 deceased, or that the petitioner has a special interest in the grave or
29 abandoned public cemetery.

30 (3) The entry on the property would not unreasonably interfere with the
31 enjoyment of the property by the landowner.

32 (b) The clerk's order may state one or more of the following:

33 (1) Specify the dates and the daylight hours that the petitioner may enter
34 and remain on the property.

35 (2) Grant the petitioner the right to enter the landowner's property
36 periodically, as specified in the order, after the time needed for initial
37 restoration of the grave or abandoned public cemetery.

38 (3) Specify a reasonable route from which the petitioner may not deviate
39 in all entries and exits from the property.

40 **"§§ 65-103 through 65-105: Reserved for future codification purposes.**

41 "Part 4. Removal of Graves.

42 **"§ 65-106. Removal of graves; who may disinter, move and reinter; notice;**
43 **certificate filed; reinterment expenses; due care required.**

1 (a) The State of North Carolina and any of its agencies, public institutions, or
2 political subdivisions, the United States of America or any agency thereof, any church,
3 electric power or lighting company, or any person, firm, or corporation may effect the
4 disinterment, removal, and reinterment of graves as follows:

5 (1) By the State of North Carolina and any of its agencies, public
6 institutions, or political subdivisions, the United States of America or
7 any agency thereof, when it shall determine and certify to the board of
8 county commissioners in the county from which the bodies are to be
9 disinterred that such removal is reasonably necessary to perform its
10 governmental functions and the duties delegated to it by law.

11 (2) By any church authority in order to erect a new church, parish house,
12 parsonage, or any other facility owned and operated exclusively by
13 such church; in order to expand or enlarge an existing church facility;
14 or better to care for and maintain graves not located in a regular
15 cemetery for which such church has assumed responsibility of care and
16 custody.

17 (3) By an electric power or lighting company when it owns land that is to
18 be used as a reservoir on which graves are located.

19 (4) By any person, firm, or corporation who owns land on which an
20 abandoned cemetery is located after first securing the consent of the
21 governing body of the municipality or county in which the abandoned
22 cemetery is located.

23 (b) The party effecting the disinterment, removal, and reinterment of a grave
24 containing a decedent's remains under the provisions of this Chapter shall, before
25 disinterment, give 30 days' written notice of such intention to the next of kin of the
26 decedent, if known or subject to being ascertained by reasonable search and inquiry, and
27 shall cause notice of such disinterment, removal, and reinterment to be published at
28 least once per week for four successive weeks in a newspaper of general circulation in
29 the county where such grave is located and the first publication shall be not less than 30
30 days before disinterment. Any remains disinterred and removed hereunder shall be
31 reinterred in a suitable cemetery.

32 (c) The party removing or causing the removal of all such graves shall, within 30
33 days after completion of the removal and reinterment, file with the register of deeds of
34 the county from which the graves were removed and with the register of deeds of the
35 county in which reinterment is made, a written certificate of the removal facts. Such
36 certificate shall contain the full name, if known or reasonably ascertainable, of each
37 decedent whose grave is moved, a precise description of the site from which such grave
38 was removed, a precise description of the site and specific location where the decedent's
39 remains have been reinterred, the full and correct name of the party effecting the
40 removal, and a brief description of the statutory basis or bases upon which such removal
41 or reinterment was effected. If the full name of any decedent cannot reasonably be
42 ascertained, the removing party shall set forth all additional reasonably ascertainable
43 facts about the decedent including birth date, death date, and family name.

1 The fee for recording instruments in general, as provided in G.S. 161-10(a)(1), for
2 registering a certificate of removal facts shall be paid to the register of deeds of each
3 county in which such certificate is filed for registration.

4 (d) All expenses of disinterment, removal, and acquisition of the new burial site
5 and reinterment shall be borne by the party effecting such disinterment, removal, and
6 reinterment, including the actual reasonable expense of one of the next of kin incurred
7 in attending the same, not to exceed the sum of two hundred dollars (\$200.00).

8 (e) The office of vital statistics of North Carolina shall promulgate regulations
9 affecting the registration and indexing of the written certificate of the removal facts,
10 including the form of that certificate.

11 (f) The party effecting the disinterment, removal, and reinterment of a decedent's
12 remains under the provisions of this Chapter shall ensure that the site in which
13 reinterment is accomplished shall be of such suitable dimensions to accommodate the
14 remains of that decedent only and that such site shall be reasonably accessible to all
15 relatives of that decedent, provided that the remains may be reinterred in a common
16 grave where written consent is obtained from the next of kin. If under the authority of
17 this Chapter, disinterment, removal, and reinterment is effected by the State of North
18 Carolina or any of its agencies, public institutions, or political subdivisions, the United
19 States of America or any agency thereof, any electric power or lighting company, then
20 such disinterment, removal, and reinterment shall be performed by a funeral director
21 duly licensed as a "funeral director" or a "funeral service licensee" under the provisions
22 of Article 13A of Chapter 90 of the General Statutes.

23 (g) All disinterment, removal, and reinterment under the provisions of this
24 Chapter shall be made under the supervision and direction of the county board of
25 commissioners or other appropriate official, including the local health director,
26 appointed by such board for the county where the disinterment, removal, and
27 reinterment take place. If reinterment is effected in a county different from the county of
28 disinterment with the consent of the next of kin of the deceased whose remains are
29 disinterred, then the disinterment and removal shall be made under the supervision and
30 direction of the county board of commissioners or other appropriate official, including
31 the local health director, appointed by such board for the county of the disinterment, and
32 the reinterment shall be made under the supervision and direction of the county board of
33 commissioners or other appropriate official, including the local health director,
34 appointed by such board for the county of reinterment.

35 Due care shall be taken to do said work in a proper and decent manner, and, if
36 necessary, to furnish suitable coffins or boxes for reintering such remains. Due care
37 shall also be taken to remove, protect, and replace all tombstones or other markers, so as
38 to leave such tombstones or other markers in as good condition as that prior to
39 disinterment. Provided that in cases where the remains are to be moved to a perpetual
40 care cemetery or other cemetery where upright tombstones are not permitted, a suitable
41 replacement marker shall be provided.

42 (h) Nothing contained in this Part shall be construed to grant or confer the power
43 or authority of eminent domain, or to impair the right of the next of kin of a decedent to

1 remove or cause the removal, at his or their expense, of the remains or grave of such
2 decedent.

3 **"§§ 65-107 through 65-110: Reserved for future codification purposes.**

4 "Part 5. County Care of Rural Cemeteries.

5 **"§ 65-111. County commissioners to provide list of public and abandoned**
6 **cemeteries.**

7 Each board of county commissioners shall have the following duties and
8 responsibilities:

9 (1) To prepare and keep on record in the office of the register of deeds a
10 list of all public cemeteries in the county outside the limits of
11 incorporated municipalities, and not established and maintained for the
12 use of an incorporated municipality, including the names and
13 addresses of the persons in possession and control of those public
14 cemeteries.

15 (2) To prepare and keep on record in the office of the register of deeds a
16 list of all abandoned public cemeteries.

17 (3) To furnish to the Department copies of the lists of such public and
18 abandoned cemeteries, to the end that it may furnish to the boards, for
19 the use of the persons in control of such cemeteries, suitable literature,
20 suggesting methods of taking care of such places.

21 **"§ 65-112. Appropriations by county commissioners.**

22 To encourage the persons in possession and control of the public cemeteries referred
23 to in G.S. 65-111 to take proper care of and to beautify such cemeteries, to mark
24 distinctly their boundary line with evergreen hedges or rows of suitable trees, and
25 otherwise to lay out the grounds in an orderly manner, the board of county
26 commissioners of any county, upon being notified that two-thirds of the expense
27 necessary for so marking and beautifying any cemetery has been raised by the local
28 governing body of the institution which owns the cemetery, and is actually in hand, is
29 hereby authorized to appropriate from the general fund of the county one-third of the
30 expense necessary to pay for such work, the amount appropriated by the board of
31 commissioners in no case to exceed fifty dollars (\$50.00) for each cemetery.

32 **"§ 65-113. County commissioners to have control of abandoned public cemeteries;**
33 **trustees.**

34 The county commissioners of the various counties are authorized to oversee all
35 abandoned public cemeteries in their respective counties, to see that the boundaries and
36 lines are clearly laid out, defined, and marked, and to take proper steps to preserve them
37 from encroachment, and they are hereby authorized to appropriate from the general fund
38 of the county whatever sums may be necessary from time to time for the above
39 purposes.

40 The board of county commissioners of the various counties may appoint a board of
41 trustees not to exceed five in number and to serve at the will of the board, and may
42 impose upon such trustees the duties required of the board of commissioners by this
43 Article; and such trustees may accept gifts and donations for the purpose of upkeep and
44 beautification of such cemeteries.

1 **"§ 65-114 through 65-125: Reserved for future codification purposes.**

2 **SECTION 2.** Article 1 of Chapter 65 is repealed.

3 **SECTION 3.** Article 4 of Chapter 65 is repealed.

4 **SECTION 4.** Article 5 of Chapter 65 is repealed.

5 **SECTION 5.** Article 8 of Chapter 65 is repealed.

6 **SECTION 6.** Article 10 of Chapter 65 is repealed.

7 **SECTION 7.** This act becomes effective July 1, 2007, and applies to all
8 trusts created on or after that date.