

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-202
SENATE BILL 1244**

AN ACT AUTHORIZING THE NORTH CAROLINA CEMETERY COMMISSION TO INCREASE CERTAIN FEES, MAKING CLARIFYING CHANGES UNDER THE NORTH CAROLINA CEMETERY ACT, AND MODIFYING THE FORMULA USED TO DETERMINE THE ENTERPRISE TIER DESIGNATION OF A COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-54 reads as rewritten:

"§ 65-54. Annual budget of Commission; collection of funds.

The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and from any other sources provided in this Article. On or before July 1 of each year, each licensed cemetery shall pay a license fee to be set by the Commission in an amount not to exceed ~~three hundred dollars (\$300.00)~~ six hundred dollars (\$600.00). In addition, each licensed cemetery shall pay to the Commission an inspection fee for each grave space, niche, or mausoleum crypt ~~sold when the certificate of interment right is issued~~ and shall pay a fee for each vault, ~~niche,~~ belowground crypt, ~~mausoleum crypt,~~ memorial, or opening and closing of a grave space that is included in a preneed cemetery contract. The inspection fee for each grave space, niche, or mausoleum crypt is payable when the ~~item is sold~~ certificate of interment right is issued and may not exceed ~~two dollars (\$2.00)~~ four dollars (\$4.00). The fee for each of the listed items that are included in a preneed cemetery contract is payable when the contract is made and may not exceed ~~five dollars (\$5.00)~~ ten dollars (\$10.00)."

SECTION 2. G.S. 65-55(c) reads as rewritten:

"(c) Upon receipt of the application and filing fee of ~~eight hundred dollars (\$800.00)~~ to be set by the Commission in an amount not to exceed one thousand six hundred dollars (\$1,600), the Commission shall cause an investigation to be made to establish the following criteria for approval of the application:

- (1) The creation of a legal entity to conduct cemetery business, and its proposed financial structure.
- (2) A perpetual care trust fund agreement, with an initial deposit of not less than fifty thousand dollars (\$50,000) and with a bank cashier's check or certified check attached for the amount made payable to the trustee. The trust fund agreement must be executed by the applicant, accepted by the trustee, and conditioned only upon approval of the application.
- (3) A plat of the land to be used for the cemetery, showing the location of the cemetery and the access roads to the cemetery.
- (4) Designation by the legal entity wishing to establish a cemetery of a general manager. The general manager must be a person of good moral character and have at least one year's experience in cemeteries.
- (5) Development plans sufficient to ensure the community that the cemetery will provide adequate cemetery services and that the property is suitable for use as a cemetery."

SECTION 3. G.S. 65-57(c) reads as rewritten:

"(c) The application shall be accompanied by an initial filing fee of ~~four hundred dollars (\$400.00)~~ to be set by the Commission in an amount not to exceed one thousand dollars (\$1,000) for cemetery sales organization and cemetery management organization and an initial filing fee of ~~two hundred dollars (\$200.00)~~ to be set by the Commission in an amount not to exceed five hundred dollars (\$500.00) for a cemetery broker. If ninety percent (90%) or more of the applicant is owned by an existing cemetery company operating under the North Carolina Cemetery Act, then the initial filing fee shall be one half of the sums set out herein. On or before July 1 of each year, each licensed cemetery sales organization, cemetery management organization, or cemetery broker shall pay a license renewal fee of ~~one hundred dollars (\$100.00)~~ to be set by the Commission in an amount not to exceed six hundred dollars (\$600.00) per year."

SECTION 4. G.S. 65-58(c) reads as rewritten:

"(c) The application shall be accompanied by a filing fee of ~~fifteen dollars (\$15.00)~~ to be set by the Commission in an amount not to exceed one hundred dollars (\$100.00) to cover the expenses of processing and investigation. After processing and ~~investigation~~ investigation, the Commission shall grant, or refuse to grant, the license applied for. The ~~annual~~ license fee for a two-year term shall be set by the Commission but shall not exceed ~~ten dollars (\$10.00)~~ one hundred dollars (\$100.00)."

SECTION 5. G.S. 65-59 reads as rewritten:

"§ 65-59. Application for a change of control; filing fee.

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee of ~~two hundred dollars (\$200.00)~~ to be set by the Commission in an amount not to exceed one thousand six hundred dollars (\$1,600)."

SECTION 6. G.S. 65-63 reads as rewritten:

"§ 65-63. Requirements for perpetual care fund.

A cemetery company may not cause or permit advertising of a perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in the fund is at least ~~forty dollars (\$40.00)~~ one hundred dollars (\$100.00) or ten percent (10%) of the retail sale price, whichever is greater, per grave space, niche, or mausoleum crypt sold. Nothing may prohibit an individual cemetery from requiring a perpetual care deposit for grave memorial markers to be deposited in the perpetual care fund so long as the same assessment is uniformly applied to all grave memorial markers installed in the cemetery."

SECTION 7. G.S. 65-64(a) reads as rewritten:

"(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring such payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a ~~penalty~~ late filing fee of one dollar (\$1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of the

superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with G.S. 36A-2. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the said net income is not sufficient to pay such fees and other expenses, the same shall be paid by the cemetery company."

SECTION 8. G.S. 65-64(b) reads as rewritten:

"(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then said cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to ~~ten dollars (\$10.00)~~ fifty dollars (\$50.00) per space for all spaces either previously sold or contracted for sale in said cemetery at the time of conversion or ~~twenty-five thousand dollars (\$25,000)~~ fifty thousand dollars (\$50,000), whichever sum is greater."

SECTION 9. G.S. 65-66(l) reads as rewritten:

"(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect ~~a penalty a late filing fee~~ a late filing fee of twenty-five dollars (\$25.00) ~~per day for each day month for each month~~ of delinquency."

SECTION 10. G.S. 105-129.3(b) reads as rewritten:

"(b) Annual Designation. – Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding ~~three years~~ 12 months.
- (2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding ~~three years~~ 12 months.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to ~~lowest~~ lowest, for the preceding 12 months.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and publish this information. An enterprise tier designation is effective only for the calendar year following the designation."

SECTION 11. Section 10 of this act is effective when it becomes law and applies to designations made on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 7:30 p.m. this 17th day of August, 2004