

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE DRH80007-ST-1 (11/16)

Short Title: Abandoned Cemeteries. (Public)

Sponsors: Representative Justus.

Referred to:

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.**

25 For the maintenance and preservation of abandoned or neglected graves or
26 abandoned or neglected cemeteries, any person, firm, or corporation may, by will or
27 otherwise, place in the hands of the clerk of the superior court of any county in the State

1 where such grave or lot is located any sum of money not less than five thousand dollars
2 (\$5,000), the income from which is to be used for keeping in good condition the
3 abandoned or neglected grave or the abandoned or neglected cemetery with specific
4 instructions as to the use of the fund.

5 **"§ 65-92. Separate record of accounts to be kept.**

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

12 **"§ 65-93. Funds to be kept perpetually.**

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

19 **"§ 65-94. Investment of funds.**

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

22 **"§ 65-95. Clerk's bond and fees; substitution of bank or trust company as trustee.**

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

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

39 **"§ 65-96. Funds exempt from taxation.**

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

42 **"§§ 65-97 through 65-100: Reserved for future codification purposes.**

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

44 **"§ 65-101. Entering public or private property to maintain or visit with consent.**

- 1 (1) By the State of North Carolina and any of its agencies, public
2 institutions, or political subdivisions, the United States of America or
3 any agency thereof, when it shall determine and certify to the board of
4 county commissioners in the county from which the bodies are to be
5 disinterred that such removal is reasonably necessary to perform its
6 governmental functions and the duties delegated to it by law.
- 7 (2) By any church authority in order to erect a new church, parish house,
8 parsonage, or any other facility owned and operated exclusively by
9 such church; in order to expand or enlarge an existing church facility;
10 or better to care for and maintain graves not located in a regular
11 cemetery for which such church has assumed responsibility of care and
12 custody.
- 13 (3) By an electric power or lighting company when it owns land that is to
14 be used as a reservoir on which graves are located.
- 15 (4) By any person, firm, or corporation who owns land on which an
16 abandoned cemetery is located after first securing the consent of the
17 governing body of the municipality or county in which the abandoned
18 cemetery is located.

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

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

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

43 (d) All expenses of disinterment, removal, and acquisition of the new burial site
44 and reinterment shall be borne by the party effecting such disinterment, removal, and

1 reinterment, including the actual reasonable expense of one of the next of kin incurred
2 in attending the same, not to exceed the sum of two hundred dollars (\$200.00).

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

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

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

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

37 (h) Nothing contained in this Part shall be construed to grant or confer the power
38 or authority of eminent domain, or to impair the right of the next of kin of a decedent to
39 remove or cause the removal, at his or their expense, of the remains or grave of such
40 decedent.

41 **"§§ 65-107 through 65-110: Reserved for future codification purposes.**

42 **"Part 5. County Care of Rural Cemeteries.**

43 **"§ 65-111. County commissioners to provide list of public and abandoned**
44 **cemeteries.**

1 Each board of county commissioners shall have the following duties and
2 responsibilities:

3 (1) To prepare and keep on record in the office of the register of deeds a
4 list of all public cemeteries in the county outside the limits of
5 incorporated municipalities, and not established and maintained for the
6 use of an incorporated municipality, including the names and
7 addresses of the persons in possession and control of those public
8 cemeteries.

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

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

15 **"§ 65-112. Appropriations by county commissioners.**

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

26 **"§ 65-113. County commissioners to have control of abandoned public cemeteries;**
27 **trustees.**

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

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

39 **"§ 65-114 through 65-125: Reserved for future codification purposes.**

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

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

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

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

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

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