

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 107  
Committee Substitute Favorable 4/24/07

Short Title: Abandoned Cemeteries.

(Public)

Sponsors:

Referred to:

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.**

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  
28 where such grave or lot is located any sum of money not less than five thousand dollars  
29 (\$5,000), the income from which is to be used for keeping in good condition the

1 abandoned or neglected grave or the abandoned or neglected cemetery with specific  
2 instructions as to the use of the fund.

3 **"§ 65-92. Separate record of accounts to be kept.**

4 It shall be the duty of the clerk of the superior court to keep a separate record for  
5 keeping account of the money deposited as provided in G.S. 65-91, to keep a perpetual  
6 account of the same therein, and to record therein the specific instructions about the use  
7 of the income on such money. The clerk shall see that the income is spent according to  
8 such specific instructions and shall place a copy of the accounting in the estate file.

9 **"§ 65-93. Funds to be kept perpetually.**

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

16 **"§ 65-94. Investment of funds.**

17 Money placed in the office of the superior court clerk in accordance with this Part  
18 shall be invested in the same manner as is provided by law for the investment of other  
19 trust funds by the clerk of the superior court.

20 **"§ 65-95. Clerk's bond; substitution of bank or trust company as trustee.**

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

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

37 **"§ 65-96. Funds exempt from taxation.**

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

40 **"§§ 65-97 through 65-100: Reserved for future codification purposes.**

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

42 **"§ 65-101. Entering public or private property to maintain or visit with consent.**



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

18 (g) All disinterment, removal, and reinterment under the provisions of this Part  
19 shall be made under the supervision and direction of the county board of commissioners  
20 or other appropriate official, including the local health director, appointed by such board  
21 for the county where the disinterment, removal, and reinterment take place. If  
22 reinterment is effected in a county different from the county of disinterment with the  
23 consent of the next of kin of the deceased whose remains are disinterred, then the  
24 disinterment and removal shall be made under the supervision and direction of the  
25 county board of commissioners or other appropriate official, including the local health  
26 director, appointed by such board for the county of the disinterment, and the reinterment  
27 shall be made under the supervision and direction of the county board of commissioners  
28 or other appropriate official, including the local health director, appointed by such board  
29 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 and the Publications Division in the  
12 Department of the Secretary of State copies of the lists of such public  
13 and abandoned cemeteries, to the end that it may furnish to the boards  
14 of county commissioners, for the use of the persons in control of such  
15 cemeteries, suitable literature, suggesting methods of taking care of  
16 such places.

17 **"§ 65-112. Appropriations by county commissioners.**

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

28 **"§ 65-113. County commissioners to have control of abandoned public cemeteries;**  
29 **trustees.**

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

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

41 **"§§ 65-114 through 65-125: Reserved for future codification purposes.**

42        **SECTION 2.** Article 1 of Chapter 65 of the General statutes is repealed.

43        **SECTION 3.** Article 4 of Chapter 65 of the General statutes is repealed.

44        **SECTION 4.** Article 5 of Chapter 65 of the General statutes is repealed.

- 1           **SECTION 5.** Article 8 of Chapter 65 of the General statutes is repealed.  
2           **SECTION 6.** Article 10 of Chapter 65 of the General statutes is repealed.  
3           **SECTION 7.** This act becomes effective July 1, 2007, and applies to all  
4 trusts created on or after that date.