

LEGISLATIVE RESEARCH COMMISSION

COMMITTEE ON CEMETERY ISSUES



REPORT TO THE
1999 GENERAL ASSEMBLY
OF NORTH CAROLINA

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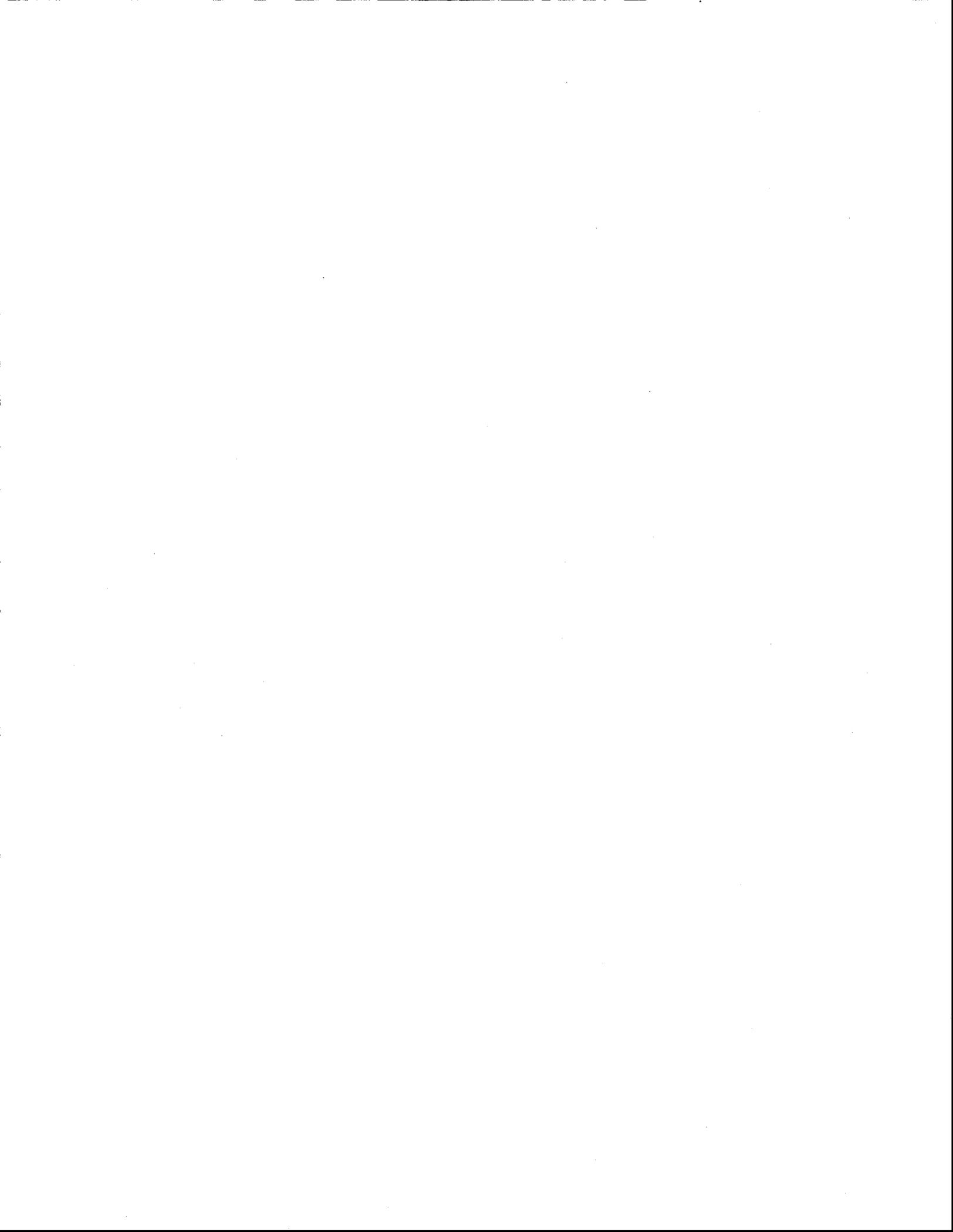
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TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
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as recommended by the Legislative Research Commission's Committee
on Cemetery Issues and a section by section summary of the bill. C





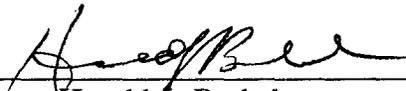
STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27601-1096

January 15, 1999

TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its report on the regulation of cemeteries. The report was prepared by the Legislative Research Commission's Committee on Cemetery Issues pursuant to G.S. 120-30.17(1).

Respectfully submitted,



Harold J. Brubaker
Speaker of the House

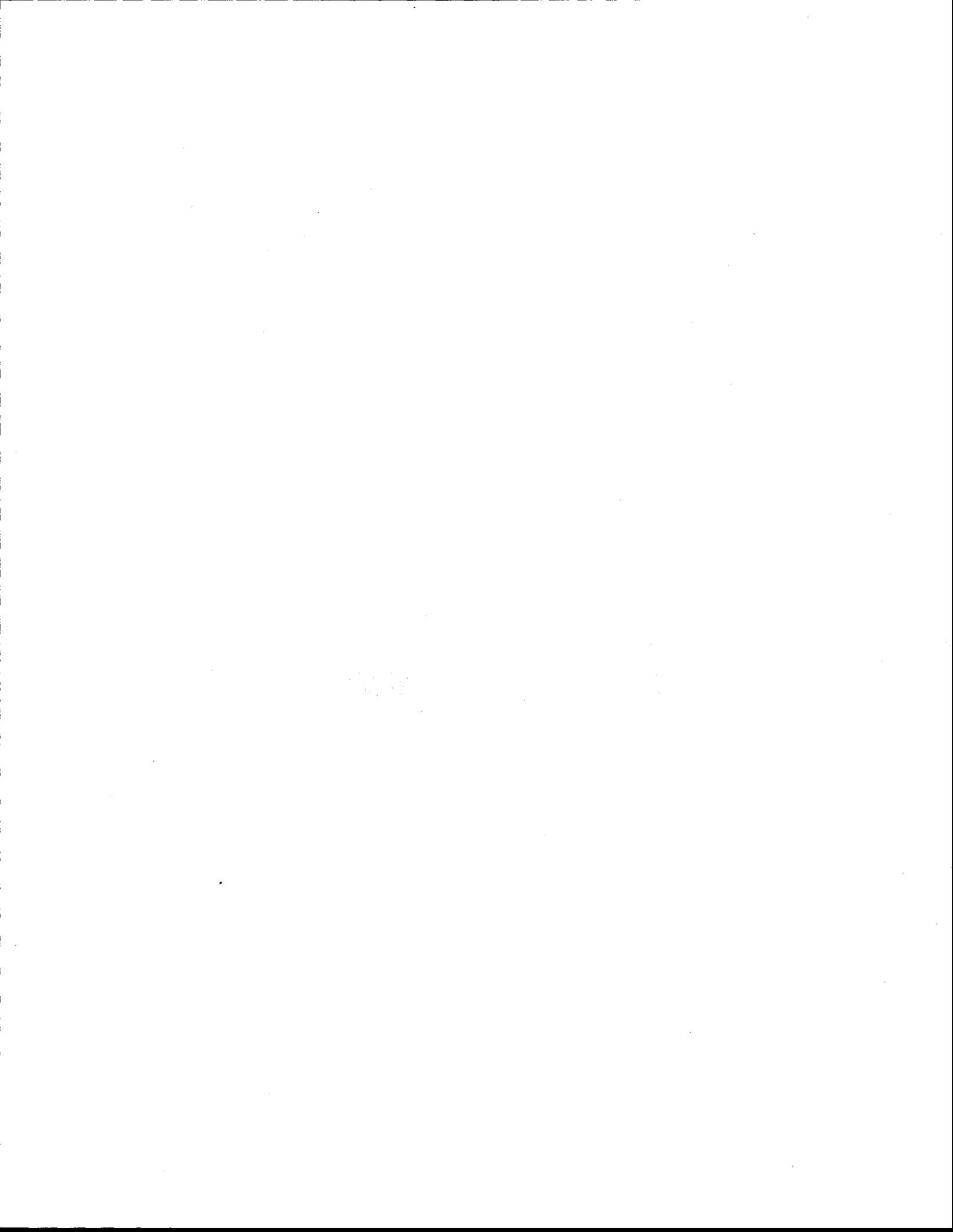


Marc Basnight
President Pro Tempore

Cochair

Legislative Research Commission





1997-1999

LEGISLATIVE RESEARCH COMMISSION

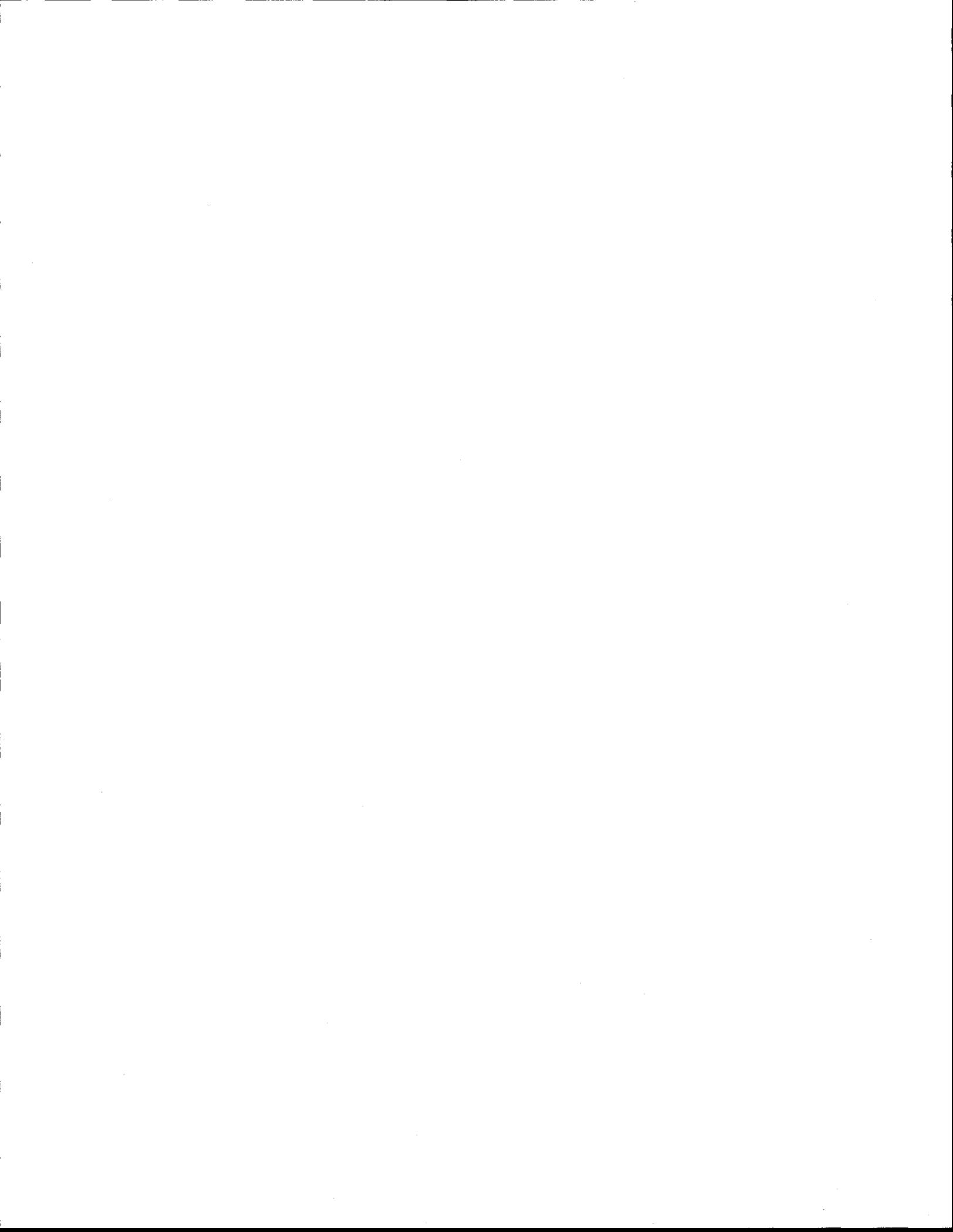
MEMBERSHIP

President Pro Tempore of the Senate
Marc Basnight, Cochair

Speaker of the House of Representatives
Harold J. Brubaker, Cochair

Sen. Austin M. Allran
Sen. Frank W. Ballance, Jr.
Sen. Jeanne H. Lucas
Sen. R.L. Martin
Sen. Ed N. Warren

Rep. Michael P. Decker, Sr.
Rep. Jerry C. Dockham
Rep. Beverly Earle
Rep. W. Eugene McCombs
Rep. Gregory J. Thompson



The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1997 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed Committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each Committee.

The study of the regulation of cemeteries was authorized by Part II, number 15 of Chapter 483 of the 1997 Session Laws. Part II of Chapter 483 allows for studies authorized by that part for the Legislative Research Commission to consider House Bill 98 in determining the nature, scope and aspects of the study. House Bill 98 reads in part: "The Legislative Research Commission may study: (1) The duties and powers of the North Carolina Cemetery Commission; (2) The limitations on the authority and powers of the North Carolina Cemetery Commission to safeguard the investment of consumers in cemetery plots and perpetual care;

(3) The need for additional legislation to protect consumers when a private cemetery ceases operation or is sold to a successor entity; (4) The need for requiring plats to be filed with the register of deeds of the county where the cemetery is located and the need to keep these plats up-to-date; and (5) Any other matters related to the regulation and operation of cemeteries in this State.” The relevant portions of Chapter 483 and House Bill 98 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Regulation Grouping area under the direction of Representative Beverly M. Earle. The Committee was chaired by Senator Luther Henry Jordan, Jr. and Representative Cary D. Allred. The full membership of the Committee is listed in Appendix B of this report. A Committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

A number of recent changes in the cemetery industry and increasing complaints about certain practices within the cemetery industry have created some uncertainty for some residents of North Carolina. This prompted a call for legislative review about these recent events and charges. Burials are rising in North Carolina. Records show that in 1996, there were 52,000 burials and about 9,000 cremations in the State. That is up from previous years. Costs of burial have also increased. The nature of ownership of for-profit cemeteries is also changing. At least 30 of North Carolina's 174 privately owned cemeteries have been bought by three national death-care conglomerates in the past eight years in North Carolina. In the recent past, individual legislators, as well as the Attorney General's Office have received increasing numbers of complaints from consumers. These complaints center on preneed sales, access to grave sites, including the opening and closing of grave places and the purchasing and installation of monuments.

The Committee has heard from numerous groups and persons, including the Cemetery Commission, consumer protection representatives from the Attorney General's Office, persons connected with the operation of cemeteries, and others that provide services to cemeteries.

Some of the questions raised to the Committee were:

1. Should the Cemetery Commission which now regulates 174 North Carolina Commercial cemeteries , also oversee public and church cemeteries and businesses that sell monuments and other burial items;
2. Should the Cemetery Commission be combined with other State agencies involved in monitoring death care industry;

3. Should the Cemetery Commission investigate consumer complaints, such as pricing and make rules designed to protect consumers.

The Committee examined the existing law governing cemeteries, Article 9 of Chapter 65 of the General Statutes, the North Carolina Cemetery Act. This law contains the law establishing the North Carolina Cemetery Commission and setting out its powers and duties. This Commission is separate from the Board of Mortuary Science, which regulates funeral homes. The Committee heard that the Commission has almost no legal authority over the consumer protection issues that the Committee has identified, particularly those concerning competitive pricing, preneed contract disclosures, and access to grave places.

Because of its limited authority, the Commission forwards consumer complaints that lie outside its jurisdiction to the Attorney General's Office. The Committee heard from the Attorney General's Office that it has not, in the past, had staff sufficient to pursue these complaints vigorously. Although the Committee heard testimony that existing laws are sufficient to address all consumer protection issues, it also heard that these laws, the State and federal anti-trust and unfair trade practices laws, offer only theoretic protection, that the amounts that can be recovered are so little that, even trebled as these laws allow, few district attorneys will follow through to suit.

The Committee was sensitive both to the needs expressed by cemeterians not to be unfairly restrained from amortizing costs over the broad range of services and goods they provide, though the public is often aware only of a few, and from providing professional perpetual care and to the needs of the consumers to have competitive pricing, adequate contract disclosures, and reasonable access to purchased grave places.

The Committee prepared a report to the 1997 General Assembly (1998 Regular Session) containing a draft bill to give the Cemetery Commission some additional authority to address those consumer protection issues identified by the Committee. This legislation was introduced into the 1997 General Assembly (1998 Regular Session) as House Bill 1314 and Senate Bill 1141. Subsequently, the House of Representatives revised this legislation to reflect more disclosure to the consumer. The 1997 General Assembly (1998 Regular Session) adjourned without action on the recommended or revised bill.

After the adjournment of the 1997 General Assembly (1998 Regular session), the chairs reconvened the Committee on December 9th to determine what action to take for the 1999 General Assembly. It was determined that the Committee should reconsider the final version of House Bill 1314 as reported out by the House Judiciary Committee. Therefore, the Committee met again on December 17th to take public comments and discuss this version of House Bill 1314 proposed to the 1997 General Assembly (1998 Regular Session). After full Committee discussion, there were new changes made to the bill and staff was instructed to redraft the bill and include it in a report. The Committee met on January 6, 1999, and approved the final Report to be sent to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATION 1: THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON CEMETERY ISSUES RECOMMENDS THE ENACTMENT OF A BILL ENTITLED "AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON CEMETERY ISSUES. (Legislative Proposal I and Summary contained in Appendix C)

The Committee found that there were cases in which consumers believed themselves to be unfairly treated at a very vulnerable time in their lives, particularly in cases involving preneed contract disclosures and pricing and resultant confusion at the time of need and access to purchased grave places, including opening and closing, and purchasing and installing monuments. The Committee further found that the Cemetery Commission does not have, currently, legal authority to protect consumers in these matters and that, though both state and federal unfair trade practices and anti-trust laws theoretically give consumers protection, this protection is not effective in enough cases because the dollar amounts that could be recovered under these laws are too small to encourage necessary and corrective legal actions.

The Committee found that by increasing the powers and duties of the Cemetery Commission, that there is reasonable competition, that consumers and their providers of products and services have reasonable access to their purchased grave spaces, and that all cemetery contracts contain clear disclosures designed to ensure that both the consumer and the

cemeterians understand exactly what is being offered and accepted and exactly what this will cost.

RECOMMENDATION 2: THE LEGISLATIVE RESEARCH COMMISSION'S
COMMITTEE ON CEMETERY ISSUES RECOMMENDS THAT THE 1999 GENERAL
ASSEMBLY ENACT LEGISLATION TO CHANGE THE COMPOSITION OF THE
CEMETERY COMMISSION SO THAT A MAJORITY OF THE COMMISSION BE
CONSUMER REPRESENTATIVES.

The Committee reviewed the statutes establishing the Cemetery Commission and found that five of the seven members may have financial interests in cemeteries, while only two members represent the public. Because of recent changes in the cemetery industry and increasing complaints about certain practices within the cemetery industry, there is a need for a more consumer-friendly orientation of the cemetery Commission.

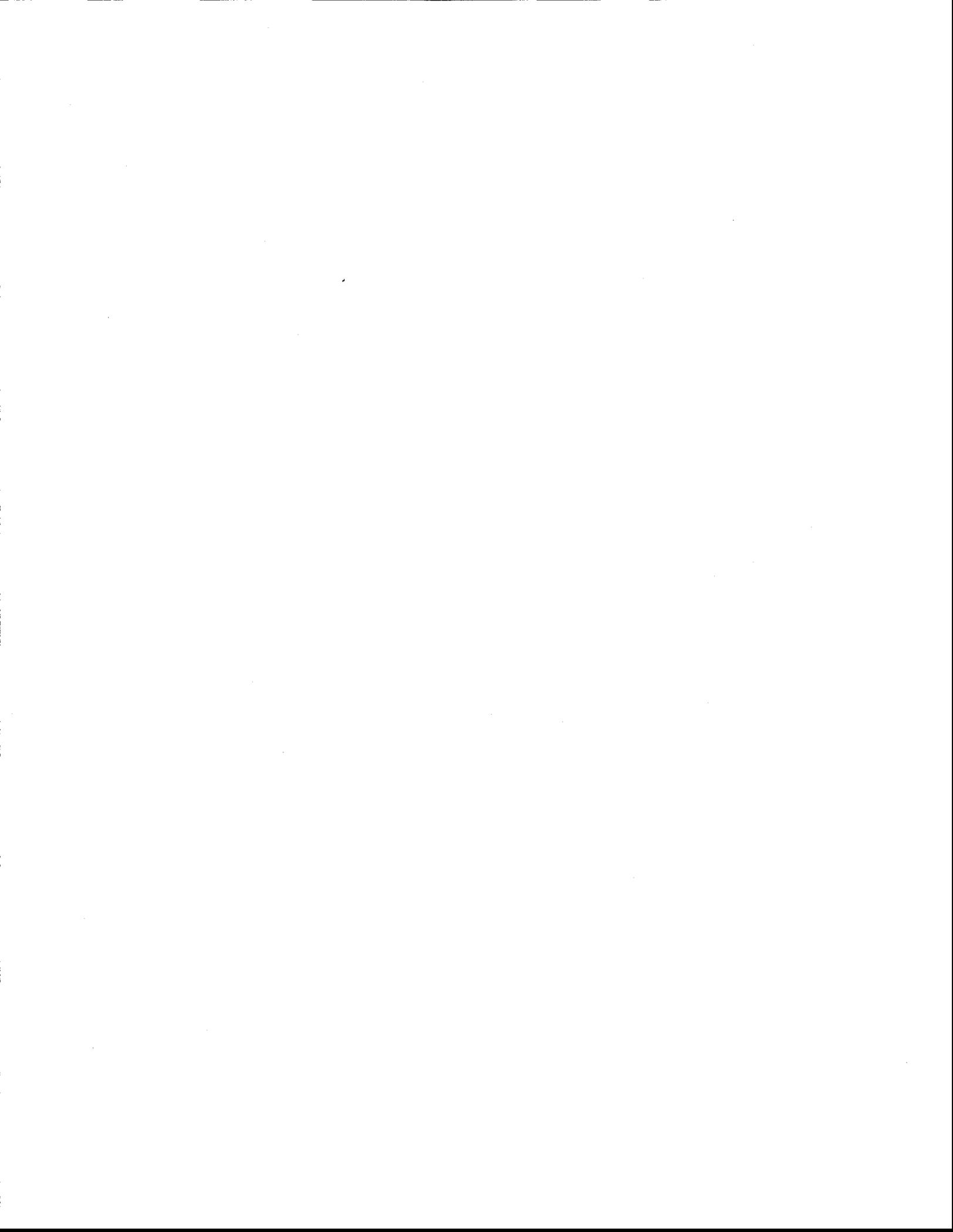
The Committee has heard from numerous groups and persons connected with the operation of cemeteries and others that provide services to cemeteries. The Committee believes that testimony before it supports and requires this change. These changes would offer protection to consumers without unfairly restraining the ceterierians' trade.

APPENDIX A

RELEVANT PORTIONS OF THE 1997 STUDIES

BILL, CHAPTER 483 OF THE 1997 SESSION

LAWS (FIRST SESSION, 1997)



APPENDIX A

CHAPTER 483

1997 Session Laws

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION,
TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO CONTINUE A
COUNCIL, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT
COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO IMPOSE
A MORATORIUM ON SERVICE CORPORATION CONVERSIONS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1997".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1997 Regular Session of the 1997 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study.

(15) Cemetery Commission and Cemetery regulation (H.B. 98 - Hill)

Section 2.11. Committee Membership. For each Legislative Research Commission Committee created during the 1997-98 biennium, the cochair of the Legislative Research Commission shall appoint the Committee membership.

Section 2.12. Reporting Date. For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120- 30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1997 General Assembly, 1998 Regular Session, or the 1999 General Assembly.

Section 2.13. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

APPENDIX B

MEMBERSHIP OF THE LRC

COMMITTEE ON CEMETERY ISSUES



**LEGISLATIVE RESEARCH COMMISSION
CEMETERY ISSUES COMMITTEE
1997-1998**

Pro Tem's Appointments

Sen. Luther H. Jordan, Jr., Co-Chair
Wilmington, NC

Sen. John M. Blust
Greensboro, NC

Ms. Helen Buckner
Siler City, NC

Mr. Elliott Futrell
Goldsboro, NC

Dr. Ray Howell
Lexington, NC

Mr. James Lofton
Wilmington, NC

Ms. Linda Roberts
Sanford, NC

Mr. Steve Staton
Rockwell, NC

LRC Member

Rep. Beverly Earle
Charlotte, NC

Staff:

Barbara Riley
Committee Staff
Research Division

John Young
Committee Staff
Research Division

Clerk:

Cindy Keen

Speaker's Appointments

Rep. Cary D. Allred, Co-Chair
Burlington, NC

Rep. W. Pete Cunningham
Charlotte, NC

Rep. Howard J. Hunter, Jr.
Murfreesboro, NC

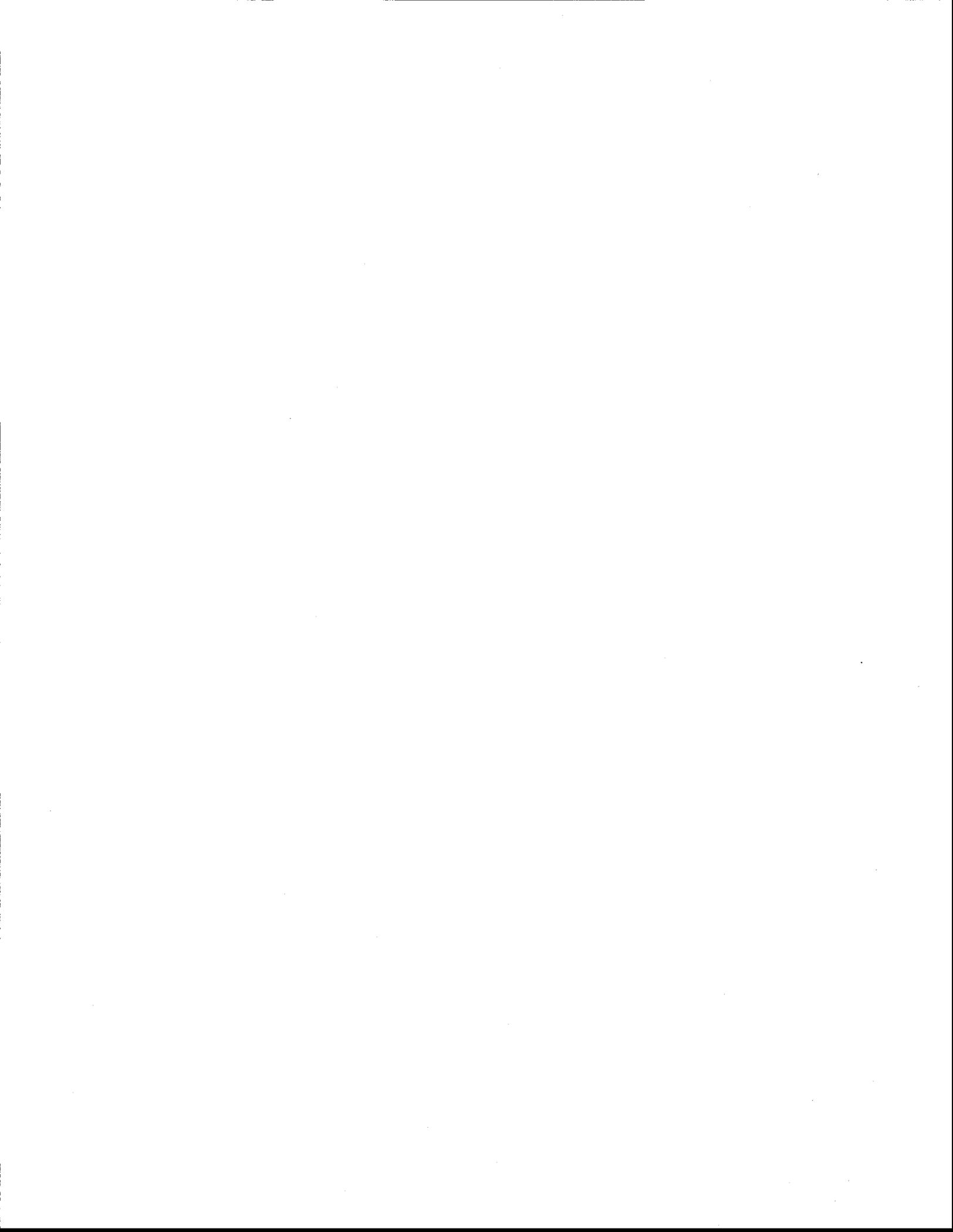
Dr. George Jones
Hendersonville, NC

Mr. Billy Lovette
Burlington, NC

Mr. Mac Pugh
Asheboro, NC

Rep. P. Wayne Sexton, Sr.
Stoneville, NC

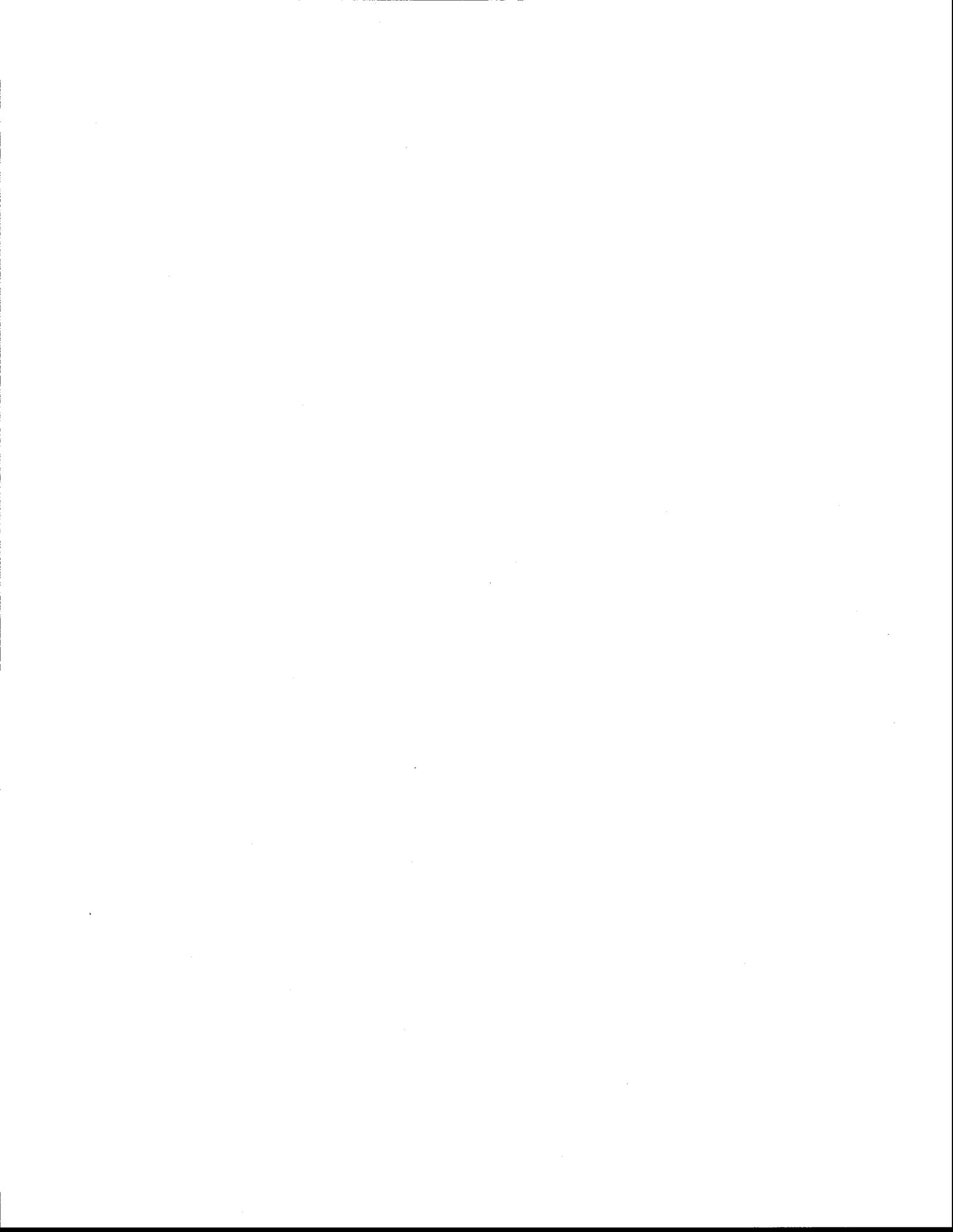
Rep. William L. Wainwright
Havelock, NC



APPENDIX C

LEGISLATIVE PROPOSAL 1

DRAFT BILL AND SUMMARY



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

s/h

D

RF-1314

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Short Title: Cemetery Consumer Protection

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CERTAIN CHANGES TO REGULATIONS REGARDING
3 CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED
4 BY THE LEGISLATIVE RESEARCH COMMISSION'S STUDY COMMITTEE ON
5 CEMETERY ISSUES.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 65-53 is amended by inserting a new
8 subdivision to read:
9 "(3a) Investigate, upon its own initiative or upon a
10 verified complaint in writing, whether a
11 particular contract for the sale of personal
12 property or services, whether preneed or at-
13 need, contains the disclosures required
14 pursuant to G.S. 65-66(d) and to adopt
15 temporary rules pursuant to Chapter 150B of
16 the General Statutes, if necessary, to
17 implement this subdivision until such time as
18 permanent rules are adopted."
19 Section 2. G.S. 65-66(d) reads as rewritten:
20 "(d) Any contract for the sale of personal property ~~and/or or~~
21 ~~services~~ services, whether preneed or at-need, shall state
22 disclose separate costs the following:
23 (1) A specific description of each item of personal
24 property purchased and the cost for each item of

LEGISLATIVE PROPOSAL I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

- 1 ~~personal property,~~ property and for each act of
2 installation or other service required by the
3 ~~contract, and for each other item of services~~
4 included in the contract, including any costs for
5 the right of interment, entombment, or inurnment;
6 (2) Specification of whether opening and closing of a
7 grave space, mausoleum space, or columbarium space
8 is included in the contract, and, if not, the
9 current prices for opening and closing and a
10 statement that these prices are subject to change;
11 (3) Any requirements or costs relating to memorial
12 markers, including any obligations of the grave
13 space, mausoleum space, or columbarium space owner
14 if the owner desires to have an outside provider
15 provide the marker and any costs relating to having
16 an outside provider provide and place a marker;
17 (4) A statement describing, in language that is
18 readable and understandable by a person of average
19 intelligence, experience, and education, the nature
20 of the property right in the grave space, mausoleum
21 space, or columbarium space;
22 (5) A statement that a preneed purchaser has, pursuant
23 to G.S. 65-66(m), 30 days following the execution
24 of a contract to cancel the contract by giving
25 written notice to the seller and that the seller
26 may cancel the contract, upon default by the
27 purchaser, by giving written notice to the
28 purchaser. The statement shall include (i) whether
29 or not the purchaser may transfer the purchaser's
30 rights in the property to another person or
31 organization and (ii) whether or not the seller
32 will refund all or part of the purchase price and
33 the conditions under which a refund will be made,
34 after the 30-day period, including the purchaser
35 moving from one locale to another;
36 (6) If the grave space, mausoleum space, or columbarium
37 space has been previously sold by the cemetery
38 company to a purchaser and the space was used in
39 the final disposition interment, entombment, or
40 inurnment of human remains and has since returned
41 to the inventory of available spaces, a statement
42 that the space has been used for a prior interment,
43 entombment, or inurnment;

LEGISLATIVE PROPOSAL I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

- 1 (7) A statement identifying the person or legal entity
2 which owns the cemetery or provides the property or
3 services, including whether the entity is wholly or
4 partially owned by another corporation; and
5 (8) That the purchaser is permitted to obtain products
6 and services from an outside provider bonded and
7 qualified pursuant to subsection (n) of this
8 section; and if the purchaser elects to obtain
9 products and services from such an outside
10 provider, a statement disclosing any fees or
11 assessments charged to the outside provider or to
12 the purchaser.

13 Section 2.1. G.S. 65-66 is amended by adding a new
14 subsection to read:

15 "(n) A cemetery company shall not prohibit providers of
16 cemetery products or services from providing products or services
17 to persons having rights in a grave space, mausoleum space, or
18 columbarium space so long as the provider is properly bonded to
19 provide the product or service. A funeral establishment duly
20 licensed pursuant to Article 13A of Chapter 90 of the General
21 Statutes or other providers of cemetery products or services
22 which maintains comprehensive liability insurance coverage of at
23 least \$1 million dollars, and their agents or employees of such
24 an establishment acting on its behalf shall be considered
25 properly bonded to provide such products or services as otherwise
26 permitted by law. This subsection does not prohibit a cemetery
27 company from adopting reasonable rules to ensure that these
28 providers follow procedures established by the cemetery company
29 to fulfill its obligation to its purchasers."

30 Section 3. G.S. 65-53 is amended by adding a new
31 subdivision to read:

32 "(9) The Commission shall keep records of the complaints
33 received and the action taken by the Commission on
34 each complaint. These records shall be kept for at
35 least five years after receipt of the complaint."

36 Section 4. G.S. 65-71 is amended by adding a new
37 subsection to read:

38 "(c) Failure to comply with the disclosure requirements
39 contained in G.S. 65-66(d) shall be punishable as a Class 3
40 misdemeanor."

41 Section 5. The Department of Justice through the Office
42 of the Attorney General, Consumer Protection Division, shall
43 ensure that private, for-profit cemetery companies operate within
44 Article 1 of Chapter 75 of the General Statutes, titled

LEGISLATIVE PROPOSAL I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

1 "Monopolies, Trusts, and Consumer Protection", the antitrust and
2 unfair trade practices laws.

3 Section 6. This act is effective January 1, 2000, and
4 is applicable to contracts entered into on or after that date.

5

SUMMARY

AN ACT TO MAKE CERTAIN CHANGES TO THE REGULATIONS REGARDING CEMETERIES TO PROVIDE FOR CONSUMER PROTECTION, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION'S COMMITTEE ON CEMETERY ISSUES.

Section 1: Amends G.S. 65-53 to authorize the Cemetery Commission to:

- (1) Investigate whether contracts for the sale of personal property or services, whether preneed or at-need, contain the disclosures required by law; and
- (2) Adopt temporary rules.

Section 2: Amends G.S. 66(d) to require preneed or at-need contracts with cemetery companies to disclose:

- (1) A specific description of each item of personal property purchased and the cost of the personal property or other services including and costs for the right of interment, entombment or inurnment;
- (2) Any requirements or costs relating to memorial markers;
- (3) A statement in plain language as to the nature of the property right in the burial space;
- (4) Specification of whether opening and closing of a burial space is included in the contract and if not the current prices for that service and a statement that the price can change;
- (5) A statement that a purchaser has 30 days following execution of a contract to cancel it by giving written notice to the seller and that the seller may

cancel upon default of the purchaser by giving written notice to the purchaser.

- (6) Whether the burial space is new or used;
- (7) A statement identifying the person or entity that owns the cemetery or provides the property or services; and
- (8) That the purchaser may obtain property and services from an outside provider, and elects to do so, a statement disclosing any fees or assessments charged to the outside provider.

Section 2.1: Provides that a cemetery company may not prohibit providers of cemetery products or services from providing products or services to persons having burial rights as long as the provider is bonded. A licensed funeral establishment or other providers of cemetery products or services that maintains comprehensive liability insurance coverage of at least \$1 million and their agents or employees shall be considered property bonded to provide such services and products provided by law. A company is not prohibited from adopting reasonable rules to ensure that providers follow procedures established by the company to fulfill obligations to its purchasers.

Section 3: Requires the Cemetery Commission to keep records of the complaints received and the action taken by the Commission on each complaint. These records shall be kept for at least five years.

Section 4: Amends G.S. 65-71 to make failure to comply with the disclosure requirements punishable as a Class 3 misdemeanor.

Section 5: Directs the Consumer Protection Division of the Attorney General's Office to ensure that private, for-profit cemetery companies operate within Article 1, G.S. Chapter 75 and federal anti-trust law.

Section 6: The act is effective January 1, 2000 and applies to contracts entered into on or after that date.