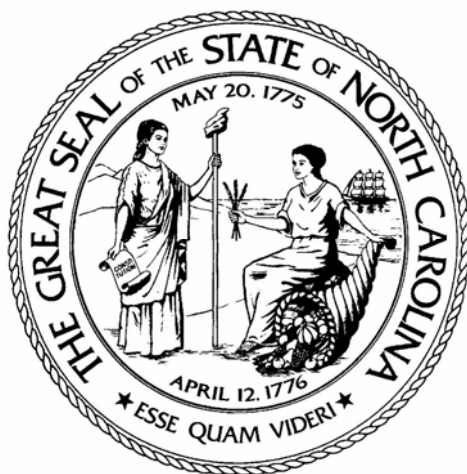


**HOUSE STUDY COMMITTEE  
ON  
ABANDONED CEMETERIES**



**REPORT TO THE HOUSE OF REPRESENTATIVES  
NORTH CAROLINA GENERAL ASSEMBLY**

**December 2006**

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NORTH CAROLINA GENERAL ASSEMBLY  
STATE LEGISLATIVE BUILDING  
RALEIGH, NORTH CAROLINA 27603

**HOUSE STUDY COMMITTEE ON ABANDONED CEMETERIES**

Representative Carolyn K. Justus, Chair  
1023 Legislative Building  
Raleigh, NC 27603  
(919) 733-5956

December 15, 2006

TO THE HONORABLE MEMBERS OF THE 2007  
NORTH CAROLINA HOUSE OF REPRESENTATIVES

Pursuant to G.S. 120-19.6 of the North Carolina General Statutes and Rule 26(a) of the 2005 House of Representatives, the House Study Committee on Abandoned Cemeteries submits its report to the 2007 House of Representatives of the North Carolina General Assembly for the 2007 Regular Session.

Respectfully submitted,

---

Representative Carolyn K. Justus, Chair

**James B. Black  
Speaker**

**Office of the Speaker  
North Carolina House of Representatives  
Raleigh, North Carolina 27601-1096**

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**HOUSE STUDY COMMITTEE ON ABANDONED CEMETERIES**

Rev. 2/20/2006

**TO THE HONORABLE MEMBERS OF THE  
NORTH CAROLINA HOUSE OF REPRESENTATIVES**

Section 1. The House Study Committee on Abandoned Cemeteries (hereinafter "Committee") is established by the Speaker of the House of Representatives pursuant to G.S. 120-19.6(a1).

Section 2. The Committee consists of the 16 members listed below, appointed by the Speaker of the House of Representatives. Members serve at the pleasure of the Speaker of the House. The Speaker of the House may dissolve the Committee at any time.

Representative Carolyn K. Justus, Chair
Representative Lorene Coates
Representative Jim Gulley
Representative Howard J. Hunter, Jr.
Representative Linda P. Johnson
Representative Joe L. Kiser
Representative Earline W. Parmon
Representative Timothy L. Spear
Representative Russell E. Tucker
Representative Edith D. Warren
Representative Larry Womble
David Brook, N. C. Dept. of Cultural Resources, Wake County
Mary Perry, Wake County
Guy McCook, Scotland County
Ronnie Riddle, Jackson County
William Russell "Russ" Davis, Wilson County

Section 3. The Committee shall review existing statutes relating to cemeteries, make recommendations to the General Assembly concerning new statutes, and assist the Department of Cultural Resources in its efforts to collect information on abandoned cemeteries.

Section 4. The Committee shall meet upon the call of its Chair. A quorum of the Committee shall be a majority of its members.

Section 5. The Committee, while in discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and Article 5A of Chapter 120 of the General Statutes. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

Section 6. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate.


Section 7. The expenses of the Committee including per diem, subsistence, travel allowances for Committee members, and contracts for professional or consultant services shall be paid upon the written approval of the Speaker of the House of Representatives pursuant to G.S. 120-32.02(c) and G.S. 120-35 from funds available to the House of Representatives for its operations. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid upon the written approval of the Speaker of the House of Representatives.

Section 8. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The Director of Legislative Assistants of the House of Representatives shall assign clerical support staff to the Committee.

Section 9. The Committee may meet at various locations around the State in order to promote greater public participation in its deliberations. The Legislative Services Commission shall grant adequate meeting space to the Committee in the State Legislative Building or the Legislative Office Building.

Section 10. The Committee may submit an interim report on the results of its study, including any proposed legislation, to the members of the House of Representatives, on or before May 1, 2006, by filing a copy of the report with the Office of the Speaker of the House of Representatives and the Legislative Library. The Committee shall submit a final report on the results of its study, including any proposed legislation, to the members of the House of Representatives, on or before December 31, 2006, by filing a copy of the report with the Office of the Speaker of the House of Representatives and the Legislative Library. The Committee shall terminate on December 31, 2006, or upon the filing of its final report, whichever occurs first.

Effective this 13<sup>th</sup> day of February, 2006.



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James B. Black  
Speaker

# HOUSE STUDY COMMITTEE ON ABANDONED CEMETERIES

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## **Introduction**

The House Study Committee on Abandoned Cemeteries was established by letter on February 2, 2006 pursuant to G.S. 120-19.6 and Rule 26(a) of the 2005 House of Representatives. The Committee was given the duty to review existing statutes relating to cemeteries, make recommendations to the General Assembly concerning new statutes, and assist the Department of Cultural Resources in its efforts to collect information on abandoned cemeteries. The Committee is directed to report its findings and recommendations to the House of Representatives by December 31, 2006.

## **STUDY COMMITTEE PROCEEDINGS**

The House Study Committee on Abandoned Cemeteries met on six occasions during the 2006 interim: March 8, 2006, April 10, 2006, September 8, 2006, October 19, 2006, November 16, 2006, and December 13, 2006. The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting is available in the Legislative Library.

### **March 8, 2006**

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The House Study Committee on Abandoned Cemeteries met on March 8, 2006 in Room 1228 of the Legislative Building at 10:00 AM.

Chairwoman Justus described the purpose of the Committee and the reason for its formation. The reasons given include protection of historic gravesites and clarification of definitions related to cemeteries.

Committee staff provided an overview of the Committee's charge, explaining the duties and the governing rules for Committee business.

Committee staff then provided a summary of a previous legislative study on abandoned cemeteries conducted in 1980. The previous committee had made recommendations to clarify language pertaining to abandoned cemeteries. As a result of that study committee's recommendations, a statewide program was implemented making individual counties responsible for compiling information on abandoned cemeteries within their jurisdiction.

Dr. David Brook, Director, Division of Historical Resources, Office of Archives and History, Department of Cultural Resources, described to the Committee the role of the Department of Cultural Resources as it relates to the activities of this Committee. Dr. Brook further reported on the past efforts of DCR and its activities since the previous legislative study on abandoned cemeteries.

## April 10, 2006

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The House Study Committee on Abandoned Cemeteries met on Monday, April 10, 2006 in Room 1228 of the Legislative Building at 2:00 PM.

Erika Churchill, Committee staff, provided answers to questions posed at the last meeting. Ms. Churchill then provided an overview of current pertinent statutes including the requirements of counties and cities in relation to abandoned cemeteries; how the State regulates admittance to a cemetery on another person's land; and the criminal infractions associated with damaging or vandalizing cemeteries.

Shawn Parker, Committee staff, reported on statutes that other states in the Southeast have in effect to regulate abandoned cemeteries.

Myra Torain, Committee staff, explained the list of abandoned public cemeteries that was supplied by the Secretary of State's Office. Ms. Torain reported that only 31 counties responded to the Secretary of State's request directed by the 1980 General Assembly.

Ronnie Riddle, public member of the Committee, spoke on a number of abandoned cemeteries that have been cleaned up in Jackson County. He explained volunteers and county jail inmates clean away the debris. Members expressed an interest in hearing about more programs such as this in future meetings.

Shirley Olson, spoke of the importance of the history represented by cemeteries.

R. Kelly Bryant Jr., presented on cemetery documentation in Durham. Mr. Bryant emphasized the importance of volunteers in these efforts because they completed the majority of the survey work in Durham. He reminded the committee of the great resources the state has in its historical societies.

## September 8, 2006

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The House Study Committee on Abandoned Cemeteries met on Friday, September 8, 2006 at 10:00 am in Room 421 of the Legislative Office Building.

Committee staff provided an overview of past meetings and findings based on the findings of the first interim's study.

The Committee then established a conference call with coordinators of the RIP Guardian Program, Texas Historical Commission. Anne Shelton, RIP Guardian Coordinator, and Gerron Hite, Statewide Cemetery Preservation Coordinator, gave an introductory overview



of the Texas program. The primary goal of the RIP Guardian program is to promote long-term involvement with at risk historical cemeteries. Through local programs, volunteers identify unknown and neglected cemeteries; increase community involvement in maintenance and preservation; develop master plans for preservation; encourage protection and increase awareness of the cemeteries significance through education; and promote community culture and heritage.

Ms. Mildred Goss, President, Granville County Genealogical Society 1746, Inc. Ms. Goss discussed how her society has been cataloging the cemeteries in Granville County. She asked the Committee to consider stronger laws to regulate developer treatment of grave sites.

Representative Spear, spoke to the Committee about an email he received from Mr. Scott E. Streater. Representative Spear stressed the contents of the email demonstrate the need for more definitions concerning grave sites and what powers the sheriff has to enforce the laws concerning grave sites and cemeteries.

## October 19, 2006

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The House Study Committee on Abandoned Cemeteries met on Thursday, October 19th, 2006 at 10:00 am in Room 1027/1128 of the Legislative Building.

The Committee began with a discussion on the conference call with the Texas Cemetery Commission from the previous meeting. The discussion pertained to a particular program under the Commission called Record, Investigate and Protect (RIP). The program was funded with a \$650,000 federal grant. The Committee discussed if the potential effectiveness of this type of program in North Carolina.

Chairwoman Justus cited a potential definition of an abandoned cemetery for committee consideration as one that is unprotected, unknown or lost graveyard of family, soldiers, slaves, Indians, members of disbanded or relocated church cemetery, or inhabitants of a former community.

Jennie Jones Giles, community news editor and staff reporter, Hendersonville Times-News, provided to the Committee a historical overview of her findings based in an investigative series she authored for the Hendersonville Times News. Ms. Jones Giles explained her assignment began 2 years ago when the land around a pre-civil war cemetery on top of Point Lookout was sold for development. This was the first old fort in Henderson County and had significant historical value. Descendants from Indiana and South Carolina called the newspaper concerned about the "Rugby Community" where another subdivision was built next to a cemetery which destroyed a few graves and cut off the access road. These cases sparked Giles to write a feature story on historic cemeteries from the 1790's to the present that are in danger of being destroyed by developers. Ms. Giles told the committee in there

was an overwhelming response from the community and it became a very hot issue. She explained that people began flooding the county commissioners meetings, mailboxes, and voicemails. As a result an effort was made to have volunteers from across the community clean up some of these sites. Ms. Giles discussed how steeped in history those buried in these “abandoned” cemeteries were. She called the Department of Cultural Resources asking for the definition of a public cemetery. She explained the current definition excludes cemeteries built before the 1900’s. Pre 1900s cemeteries are not considered public and did not fall under the responsibility of the state or the local community. Ms. Giles explained to the Committee that there is a desperate need for an abandoned cemetery definition. She was also concerned it only takes the signature of one descendant to have all the occupants of the cemetery removed, regardless of how other family members may feel. Ms. Giles believed some developers have made the cemeteries very nice and maintained the upkeep, while others are less concerned with the areas and let them get rundown.

Jay Jackson, Funeral Director, Henderson County, re-iterated what Ms. Giles had to say about the situation in Henderson County. Mr. Jackson spoke as a member of the Henderson County Cemetery Committee (HCCC). Mr. Jackson presented to the committee a slide show of some abandoned cemeteries that the committee and members of the community have tried to refurbish or prevent from being destroyed by developers. He explained to the Committee that the HCCC has created a color-coded list of the cemeteries in Henderson County that identifies the condition of the located cemeteries. Mr. Jackson described how Henderson County is adding a cemetery layer to their GIS mapping system. The County will use the satellite system to locate the center of the cemetery will make an information database where the public can look up the locations on the internet. The site will provide general information regarding the name, pin location, and the occupants and history of the cemetery. The County also plans to place signs that will make the property more visible.

Toby Linville, Code Enforcement Services Director, Henderson County, discussed in detail the specifics of the features and placement of the signs introduced in Mr. Jackson's presentation. Mr. Jackson was reintroduced and spoke to the Committee about a Cemetery Adoption program utilizing businesses and volunteers. Mr. Jackson told the Committee he believes there should be a buffer around any cemetery where something is being built so that buildings are kept at a respectable distance and the destruction of that cemetery is avoided. He would like the Committee to consider making a law to require cemeteries be listed on tax records so future owners know the cemetery location. Mr. Jackson asked committee for help in establishing a statewide Adopt A Cemetery program.

Ellen Turco, architectural historian, addressed the Committee and explained her experience dealing with state agencies in her attempt to report a cemetery being damaged and the difficulty she had in getting any answers. She re-iterated the need for making statewide procedures for dealing with developers so that we may prevent any further destruction of these pieces of history.

Jim Blackburn, General Counsel, Association of County Commissioners, addressed the Committee from the perspective of the County Commissioners. Mr. Blackburn remembers

this issue coming up with the association before, and the issue where he believes the most help is needed is in the labor and research intensive efforts to locate these abandoned cemeteries. He stated the cemeteries are usually not found until late in the process of building these roads and developments. He asked about the possibility of creating a grant program to help counties take care of abandoned cemeteries.

## **November 16, 2006**

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The House Study Committee on Abandoned Cemeteries met on Thursday, November 16th, 2006 at 10:00 am in Room 1027/1128 of the Legislative Building.

The Committee heard presentations from the following:

Tommy Thompson, Clerk of Court, Henderson County, discussed a particular proceeding he dealt with in his community regarding allowing descendants of those residing in an abandoned cemetery to have access to that cemetery even when it is on someone else's property. He explained that the biggest problem with the current statutes relating to abandoned cemeteries is a lack of clear and definitive terminology. Mr. Thompson suggested the Committee consider describing in greater detail the words public, private, and abandoned.

David Churchill, Clerk of Court, Guilford County, spoke to the Committee on the role of the Clerk's Office in relation trust funds set for the upkeep of cemeteries. While he appreciated the interest of the committee, he had minimal experience dealing with such accounts with Guilford County only having six accounts and they were established at least 20 years ago.

Jim Blackburn, General Counsel, North Carolina Association of County Commissioners presented to the Committee on how the NCACC was providing information on abandoned cemeteries to the county commissioners in their December issue of "County Lines", the associations' monthly publication. Mr. Blackburn suggested the need to create a mechanism or perhaps grant funds to help find abandoned cemeteries. Mr. Blackburn explained that knowing where these cemeteries are located before a problem presents itself is a major concern.

Rick Zechini, North Carolina Association of Realtors, indicated to the Committee that the vast majority of the membership of the Realtor's organization are doing the right thing when they came across abandoned cemeteries and were following the law. He did believe however, the statutes could use some revising for clarity, and that the Association of Realtors will do their part to educate their members.

Paul Welms, North Carolina Home Builders Association, explained to the Committee that it was expensive, time consuming and quite difficult to move graves, and just as difficult knowing the graves are even present. He felt the laws were adequate, but would suggest studying the enforcement of the laws particularly the penalties in greater detail. He reiterated

that in general there needs to be more awareness of the current laws and stated he would incorporate this information into their monthly magazine as well as provide a public service announcement in their newsletter.

Paul Webb, North Carolina Archaeological Council, presented to the committee on behalf of the council. He indicated that cemeteries were not just spiritual places, but irreplaceable historic and cultural resources. Mr. Webb believes the issue of abandoned cemeteries is a state-wide problem and the remedies will need to include governmental actions at all levels with the cooperation of private associations and individuals.

Representative Kiser, committee member, presented his findings on prisoners being required to work on the upkeep of the cemeteries. He indicated the issue was complicated because technically prisoners are not allowed to work on private property and that North Carolina code stipulates that work can not be performed by prisoners that would normally be provided by private industry.

Davis Osborne, Assistant director of the Division of Prisons, North Carolina Department of Corrections, reiterated the potential difficulties of having prisoners work on private property unless it would benefit the entire community. However, he did recall prisoners once working on national historic cemeteries and perhaps one could make the same argument for some of the abandoned public cemeteries.

Myra Torain, Committee staff, provided a potential recommendation in the form of a draft bill relating to criminal penalties. After a full discussion, Ms. Torain noted the committee's direction for adjustments. Ms. Torain then explained the 2<sup>nd</sup> potential recommendation relating to modifying the current statutes on public cemeteries. After a lengthy discussion, the Chair appointed a sub-committee to define an abandoned public cemetery. The committee included Representative Kiser, Representative Spear, and Mr. Guy McCook. The Committee further discussed issues relating to the amount of money to be held in public trust for maintenance of private cemeteries. Ms. Torain concluded her presentation with a potential recommendation specific to the role of the Department of Cultural Resources in identifying and preserving abandoned cemeteries.

## **December 13, 2006**

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The House Study Committee on Abandoned Cemeteries met on Wednesday, December 13th, 2006 at 10:00 am in Room 1124/1224 of the Legislative Building. The Committee discussed and approved the Committee's report to the 2007 House of Representatives.

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# FINDINGS AND RECOMMENDATIONS

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## FINDINGS :

Based upon the various presentations and Committee discussion, the House Study Committee on Abandoned Cemeteries makes the following findings:

1. The current statutes governing access to gravesites and cemeteries does adequately allow for entry while protecting the rights of the real property owner.
2. The current statutes governing removal of graves allows for the real property owner to enjoy use of the real property while maintaining the integrity of the deceased's burial place.
3. Compliance with G.S. 65-1 requiring counties to develop and maintain a listing of abandoned cemeteries in that county's territory and then deliver that list to the Secretary of State's office has been inadequate in the past due to a lack of specificity of what is meant by abandoned cemetery.
4. There is inconsistency in the use of critical terms and phrases in the current statutes governing abandoned cemeteries, and a lack of definitions of those terms and phrases, both of which give rise to confusion and misunderstanding by those utilizing the statutes.
5. The clerk of superior court has the responsibility to maintain trust accounts for neglected cemeteries, and maintenance of those trust accounts and the cemeteries can be inefficient due to a lack of funds, as the required minimum principal is \$100.00.
6. The Department of Cultural Resources currently has programs involving abandoned cemeteries, and may be a resource for developing additional programs to properly preserve and restore cemeteries in North Carolina for future generations.
7. The criminal penalties for desecration of graves are not high enough to provide a deterrent in the commission of crimes.

Therefore, the Committee makes the following recommendations:

1. The criminal penalties for crimes related to desecration of graves be raised. (See Bill Draft 2007-LG-12)
2. The current statutes be restructured and revised to provide definitions of critical, key terms and phrases, consistent use of those terms and phrases, and to raise the minimum deposit for trust accounts to care for neglected cemeteries. (See Bill Draft-ST-1)
3. The Department of Cultural Resources be charged with developing programs to properly preserve and restore cemeteries to be recommended to the General Assembly for implementation. (See Bill Draft-LG-13B)

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# PROPOSED LEGISLATION

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

H

D

BILL DRAFT 2007-LG-12A [v.1] (11/6)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/14/2006 8:15:08 AM

Short Title: Modify Laws For Desecrating Graves.

(Public)

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Sponsors: Representative Unknown.

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Referred to:

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A BILL TO BE ENTITLED  
AN ACT TO MODIFY THE LAW REGARDING THE DESECRATION OF A  
GRAVE, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE  
ON ABANDONED CEMETERIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-148 reads as rewritten:

**"§ 14-148. Defacing or desecrating grave sites.**

- (a) It is unlawful to willfully:
- (1) Throw, place or put any refuse, garbage or trash in or on any cemetery;
  - (2) Take away, disturb, vandalize, destroy or change the location of any stone, brick, iron or other material or fence enclosing a cemetery without authorization of law or consent of the surviving spouse or next of kin of the deceased thereby causing damage of less than one thousand dollars (\$1,000); or
  - (3) Take away, disturb, vandalize, destroy, or tamper with ~~or deface~~ any ~~tombstone, headstone, monument, grave marker, grave ornamentation, grave artifacts,~~ shrubbery, flowers, plants or other articles within any cemetery erected or placed to designate where ~~a body is~~ human remains are interred or to preserve and perpetuate the memory and name of any person, without authorization of law or the consent of the surviving spouse or next of kin, thereby causing damage of less than one thousand dollars (\$1,000).

(b) The provisions of this section shall not apply to a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes.

(c) Violation of this section is a Class 1 misdemeanor. In passing sentence, the court shall consider the appropriateness of restitution or reparation as a condition of probation under G.S. 15A-1343(b)(6) as an alternative to actual imposition of a fine, jail term, or both."

**SECTION 2.** G.S. 14-149 reads as rewritten:

**"§ 14-149. Desecrating, plowing over or covering up graves.**

(a) It is a Class I felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully:

(1) Open, disturb, destroy, remove, vandalize or desecrate any ~~easket, human remains~~ casket or any portion thereof or the repository of any ~~such human~~ remains, by any means including plowing under, tearing up, covering over or otherwise obliterating or removing any grave;

(1a) Take away, disturb, vandalize, destroy, tamper with or deface any tombstone, headstone, monument, grave marker, grave ornamentation, grave artifacts within any cemetery erected or placed to designate the place where human remains are interred or to preserve and perpetuate the memory and the name of any person;

(2) Take away, vandalize or destroy any stone, brick, iron or other material or fence enclosing a cemetery, causing damage of more than one thousand dollars (\$1,000); or

(3) Take away, disturb, vandalize, ~~destroy or defaced~~destroy, or tamper with any ~~tombstone, headstone, monument, grave marker, grave ornamentation, grave artifacts,~~ shrubbery, flowers, plants or other articles within any cemetery erected or placed to designate the place where ~~any dead body is~~ human remains are interred or to preserve and perpetuate the memory and the name of any person, causing damage of more than one thousand dollars (\$1,000).

(a1) It is a Class H felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully, disturb, destroy, remove, vandalize, or desecrate any human remains that have been interred in a cemetery.

(b) The provisions of this section shall not apply to a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes."

**SECTION 3.** Sections 1 and 2 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

H

D

BILL DRAFT 2007-ST-1 [v.6] (11/16)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
12/13/2006 2:05:09 PM

Short Title: Abandoned Cemeteries .

(Public)

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Sponsors: Representative.

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Referred to:

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

The General Assembly of North Carolina enacts:

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

" Article 12. Abandoned and Neglected Cemeteries.

"Part 1. General

**"§ 65-85. Definitions.**

As used in this Article the following terms mean:

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

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

"Part 2. Trust Funds for Care of Cemeteries.

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

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

the State where such grave or lot is located any sum of money not less than five thousand dollars (\$5,000.00), the income from which is to be used for keeping in good condition the abandoned or neglected grave or the abandoned or neglected cemetery with specific instructions as to the use of the fund.

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

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

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

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

**"§ 65-94. Investment of funds.**

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

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

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

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

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

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

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

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

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

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

- (1) A descendant of the person whose remains are reasonably believed to be interred in the grave or abandoned public cemetery.
- (2) A descendant's designee.
- (3) Any other person who has a special personal interest in the grave or abandoned public cemetery.

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

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

- (1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or that it is reasonably necessary to enter or cross the landowner's property to reach the grave or abandoned public cemetery.
- (2) The petitioner, or the petitioner's designee, is a descendant of the deceased, or that the petitioner has a special interest in the grave or abandoned public cemetery.
- (3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner.

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

- (1) Specify the dates and the daylight hours that the petitioner may enter and remain on the property.
- (2) Grant the petitioner the right to enter the landowner's property periodically, as specified in the order, after the time needed for initial restoration of the grave or abandoned public cemetery.
- (3) Specify a reasonable route from which the petitioner may not deviate in all entries and exits from the property.

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

"Part 4. Removal of Graves.

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

(a) The State of North Carolina and any of its agencies, public institutions, or political subdivisions, the United States of America or any agency thereof, any

church, electric power or lighting company, or any person, firm, or corporation may effect the disinterment, removal, and reinterment of graves as follows:

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

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

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

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

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

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

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

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

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

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

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

"Part 5. County Care of Rural Cemeteries.

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

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

- (1) To prepare and keep on record in the office of the register of deeds a list of all public cemeteries in the county outside the limits of incorporated municipalities, and not established and maintained for the use of an incorporated municipality, including the names and addresses of the persons in possession and control of those public cemeteries.
- (2) To prepare and keep on record in the office of the register of deeds a list of all abandoned public cemeteries.
- (3) To furnish to the Department copies of the lists of such public and abandoned cemeteries, to the end that it may furnish to the boards, for the use of the persons in control of such cemeteries, suitable literature, suggesting methods of taking care of such places.

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

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

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

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

The board of county commissioners of the various counties may appoint a board of trustees not to exceed five in number and to serve at the will of the

board, and may impose upon such trustees the duties required of the board of commissioners by this Article; and such trustees may accept gifts and donations for the purpose of upkeep and beautification of such cemeteries.

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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**BILL DRAFT 2007-LG-13B [v.3] (11/6)**

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)**  
**12/14/2006 8:16:13 AM**

Short Title: Cultural Resources/Preserve Cemeteries/Funds. (Public)

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Sponsors: Representative Unknown.

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Referred to:

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A BILL TO BE ENTITLED  
AN ACT AUTHORIZING THE DEPARTMENT OF CULTURAL RESOURCES  
TO TAKE ADDITIONAL STEPS IN PRESERVING ABANDONED  
CEMETERIES BY UNDERTAKING THE NORTH CAROLINA  
CEMETERY SURVEY AND ABANDONED CEMETERY  
STEWARDSHIP PROGRAM AND APPROPRIATING FUNDS TO  
IMPLEMENT THIS ACT, AS RECOMMENDED BY THE HOUSE SELECT  
COMMITTEE ON ABANDONED CEMETERIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** The Department of Cultural Resources shall carry out the following duties as funds and staffing permit:

(a) North Carolina Cemetery Survey and Abandoned Cemetery Stewardship Program.

- (1) Establish a North Carolina Cemetery Survey and Abandoned Cemetery Stewardship Program, to include an Adopt-A-Cemetery program.
- (2) Identify public and private grants that may be used to supplement a statewide county survey and an Adopt-A-Cemetery program for abandoned cemeteries.
- (3) Work with individuals, nonprofit organizations, and local governments, to develop a statewide program of county cemetery survey teams with county coordinators.
- (4) Create a unified system of research, evaluation, and recording procedures to assist individuals, nonprofit organizations, and local governments in the compilation of cemetery data.
- (5) Assist individuals, nonprofit organizations, and local governments through training, technical assistance, and



development of material with their efforts to survey cemeteries and to maintain abandoned cemeteries, and where staff and funding permit, assist individuals, nonprofit organizations, and local governments in their efforts to maintain historic cemeteries.

- (6) Develop an educational program designed to stimulate and maintain public interest in preserving abandoned cemeteries, including the development of uniform signs.
- (7) Maintain a statewide centralized database, and in coordination with the Center for Geographical Information Analysis (CGIA) record Geographical Information System (GIS) data on the State's cemeteries, to include a category for abandoned cemeteries.
- (8) Distribute appropriate information regarding abandoned cemeteries to associations and agencies that may discover abandoned cemeteries while in the performance of their duties.

**SECTION 2.** The Department of Cultural Resources shall, in addition to any other recommendations, prepare studies and plans, and submit a biennial report of its progress to the General Assembly.

**SECTION 3.** There is appropriated from the General Fund to the Department of Cultural Resources, Office of Archives and History, the sum of one hundred ninety-nine thousand, nine hundred eighty dollars (\$199,980) for the 2007-2008 fiscal year and the sum of one hundred sixty-eight thousand eighty dollars (\$168,080) for the 2008-2009 fiscal year to carry out the provisions of this act.

**SECTION 4.** This act becomes effective July 1, 2007.