

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 177

Short Title: Abandoned Public Cemeteries.

(Public)

Sponsors: Senators Speed; Royall, Parnell, and Carpenter.

Referred to: Local Government and Regional Affairs.

February 25, 1991

A BILL TO BE ENTITLED

AN ACT TO BETTER PRESERVE PUBLIC CEMETERIES LOCATED OUTSIDE THE TOWNS OR CITIES OR IN THE RURAL DISTRICTS: (1) BY REQUIRING THE BOARDS OF COUNTY COMMISSIONERS TO INVESTIGATE PUBLIC CEMETERIES REPORTED AS ENDANGERED AND TO OVERSEE THE PROTECTION OF ENDANGERED PUBLIC CEMETERIES AND (2) BY ESTABLISHING A SPECIAL PROCEEDING TO ALLOW A PERSON TO OBTAIN AN ORDER ALLOWING ENTRY ONTO THE PROPERTY OF A LANDOWNER WITHOUT THE LANDOWNER'S CONSENT IN ORDER TO RESTORE, MAINTAIN, OR VISIT AN ABANDONED PUBLIC CEMETERY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 65-1 reads as rewritten:

"§ 65-1. County commissioners to provide list of public and abandoned cemeteries. cemeteries; public cemetery defined.

(a) It shall be the duty of the boards of county commissioners of the various counties in the State to prepare and keep on record in the office of the register of deeds a list of all public cemeteries in the counties outside the limits of incorporated towns and cities, and not established and maintained for the use of an incorporated town or city, together with the names and addresses of the persons in possession and control of the same. To such list shall be added a list of the public cemeteries in the rural districts of such counties which have been ~~abandoned, and it abandoned~~ and a list of the public cemeteries which are endangered. It shall be the duty of the boards of county commissioners to furnish to the division of publications in the office of the Secretary of State copies of the lists of such public and abandoned and endangered cemeteries, to the

1 end that it may furnish to the boards, for the use of the persons in control of such
2 cemeteries, suitable literature, suggesting methods of taking care of such places.

3 (b) For purposes of this Article, 'public cemetery' means a cemetery:

4 (1) That is used by the community or neighborhood in which it is located;
5 and

6 (2) In which more than one family is interred."

7 Sec. 2. G.S. 65-3 reads as rewritten:

8 **"§ 65-3. County commissioners to have control of abandoned cemeteries; discretion**
9 **to appoint trustees.**

10 The county commissioners of the various counties are required to take possession
11 and control of all abandoned public cemeteries in their respective counties, to see that
12 the boundaries and lines are clearly laid out, defined, and marked, ~~and~~ to take proper
13 steps to preserve them from encroachment, to investigate any report that a public
14 cemetery is endangered due to neglect or due to any other activity, and to oversee the
15 protection of those public cemeteries that are endangered. ~~and they~~ The county
16 commissioners are hereby authorized to appropriate from the general fund of the county
17 whatever sums may be necessary from time to time for the above purposes.

18 The board of county commissioners of the various counties may appoint a board of
19 trustees not to exceed five in number and to serve at the will of the board, and may
20 impose upon such trustees the duties required of the board of commissioners by this
21 Article and such trustees may accept gifts and donations for the purpose of upkeep and
22 beautification of such cemeteries."

23 Sec. 3. Article 1 of Chapter 65 of the General Statutes is amended by adding
24 a new section to read:

25 **"§ 65-3.1. Entry onto private property without consent in order to restore,**
26 **maintain, or visit an abandoned public cemetery.**

27 (a) If the consent of the landowner cannot be obtained, any person may
28 commence a special proceeding by petitioning the clerk of superior court of the county
29 in which the abandoned public cemetery is located for an order allowing him to enter
30 the property to restore, maintain, or visit the abandoned public cemetery. The petition
31 shall be verified. This special proceeding shall be in accordance with the provisions of
32 Article 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing
33 the petitioner to enter the property if he finds that:

34 (1) It is reasonably necessary to enter or cross the landowner's property to
35 reach the abandoned public cemetery;

36 (2) The petitioner, or his designee, has a special interest in the abandoned
37 public cemetery that is designated in the proceeding; and

38 (3) Entry onto the property would not unreasonably interfere with the
39 enjoyment of the property by the landowner.

40 (b) The clerk's order may:

41 (1) Specify the dates and the daylight hours that the petitioner may enter
42 and remain on the property;

43 (2) After the time needed for the initial restoration of the public
44 abandoned cemetery, grant to the petitioner the right to enter the

- 1 landowner's property periodically, the period to be specified in the
2 order; or
3 (3) Specify a reasonable route from which the petitioner may not deviate
4 in all entries onto and exits from the property."
5 Sec. 4. This act is effective upon ratification.