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ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA 1991

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Sequential Number: 167

Short Title: CEMETERIES AND BURIAL GROUNDS -- LOCAL GOVERNING AUTHORITIES; PRESERVATION AND PROTECTION; PERMITS; PENALTIES.

Intent: Code Sections 36-60-6 and 36-60-6.1 Repealed. Code **Title 36**, Chapter 72 Enacted.

Law Number: No. 394

Origin: (House Bill No. 402).

Type: AN ACT

To amend **Title 36** of the Official Code of Georgia Annotated, relating to local government, so as to provide for the protection and preservation of certain cemeteries and burial grounds; to repeal Code Section 36-60-6, relating to the disturbing of a burial place in land development; to repeal Code Section 36-60-6.1, relating to the preservation and protection of abandoned or unmaintained cemeteries; to provide a statement of policy; to define certain terms; to authorize local governing authorities to preserve and protect certain cemeteries and burial grounds; to provide that no cemetery or burial ground shall be disturbed unless a permit is first obtained from the local government wherein such cemetery or burial ground is located; to provide for matters relative to an application for such permit; to provide for notification of certain persons; to provide conditions for the granting of such permit; to provide for appeal; to provide for certain activities by an applicant during the period of appeal under certain conditions; to provide for certain inspections for compliance; to provide for certain boards and commissions; to provide for certain financial responsibilities; to provide for penalties for violations; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by striking in its entirety Code Section 36-60-6, relating to the disturbing of a burial place in land development, which reads as follows:

"36-60-6. (a) No known burial place of any human remains shall be knowingly disturbed by the owner or owners of

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the land for the purposes of developing or changing the use of any land unless a permit is first obtained from the governing authority of the municipal corporation or county wherein the burial place is located or from the superior court of the county where the burial place is located. The governing authority or superior court shall not issue a permit unless it first reviews the plans of the applicant for the permit for the proper reinterment of the remains in order to determine that suitable arrangements for reinterment have been made and that proper reinterment will be accomplished. If the governing authority or superior court does not believe that the plans are adequate to ensure proper reinterment, no permit shall be issued.

(b) Any person who knowingly fails to comply with subsection (a) of this Code section shall be guilty of a misdemeanor and shall pay a fine of \$1,000.00 per grave disturbed.",

and inserting in lieu thereof the following:

"36-60-6. Reserved."

Section 2. Said title is further amended by striking in its entirety Code Section 36-60-6.1, relating to the preservation and protection of abandoned or unmaintained cemeteries, which reads as follows:

"36-60-6.1. (a) As used in this Code section, the term `preserve and protect' means to keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other such appropriate features so as to identify the site as a cemetery and so as to aid in the preservation and protection of such abandoned cemetery.

(b) Counties or municipalities are authorized to preserve and protect any cemetery which the county or municipality determines has been abandoned or is not being maintained and to expend public money in connection therewith."

Section 3. Said title is further amended by inserting immediately following Chapter 71 a new Chapter 72 to read as follows:

"CHAPTER 72

36-72-1. (a) The care accorded the remains of deceased persons reflects respect and regard for human dignity as well as cultural, spiritual, and religious values. The General Assembly declares that human remains and burial objects are not property to be owned by the person or entity which owns the land or water where the human remains and burial objects are interred or discovered, but human remains and burial objects are a part of the finite, irreplaceable, and nonrenewable cultural heritage of the people of Georgia which should be protected.

(b) It is the intent of the General Assembly that the provisions of this chapter be construed to require respectful treatment of human remains in accord with the equal and innate dignity of every human being and consistent with the identifiable ethnic, cultural, and religious affiliation of the deceased individual as indicated by the method of burial or other historical evidence or reliable information.

36-72-2. As used in this chapter, the term:

- (1) `Abandoned cemetery' means a cemetery which shows signs of neglect including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave markers or boundaries and for which no person can be found who is legally responsible and financially capable of the upkeep of such cemetery.
- (2) `Archeologist' means any person who is:
 - (A) A member of or meets the criteria for membership in the Society of Professional Archaeologists and can demonstrate experience in the excavation and interpretation of human graves; or
 - (B) Employed on July 1, 1991, by the state or by any county or municipal governing authority as an archeologist.
- (3) `Burial ground' means an area dedicated to and used for interment of human remains. The fact that the

area was used for burial purposes shall be evidence that it was set aside for burial purposes.

- (4) `Burial object' means any item reasonably believed to have been intentionally placed with the human remains at the time of burial or interment or any memorial, tombstone, grave marker, or shrine which may have been added subsequent to interment. Such term also means any inscribed or uninscribed marker, coping, curbing, enclosure, fencing, pavement, shelter, wall, stoneware, pottery, or other grave object erected or deposited incident to or subsequent to interment.
- (5) `Cemetery' or `cemeteries' means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains. It may be either a burial park for earth interments or a mausoleum for vault or crypt interments or a combination of one or more thereof.
- (6) `Descendant' means a person or group of persons related to a deceased human by blood or adoption in accordance with Title 19.
- (7) `Genealogist' means a person who traces or studies the descent of persons or families and prepares a probative record of such descent.
- (8) `Human remains' means the bodies of deceased human beings in any stage of decomposition, including cremated remains.
- (9) `Preserve and protect' means to keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other such appropriate features so as to identify the site as a cemetery or burial ground and so as to aid in the preservation and protection of such cemetery or burial ground.

36-72-3. Counties and municipalities are authorized to preserve and protect any abandoned cemetery or any burial ground which the county or municipality determines has been abandoned or is not being maintained, to expend public money

in connection therewith, and to exercise the power of eminent domain to acquire any interest in land necessary for that purpose.

36-72-4. No known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed by the owner or occupier of the land on which the cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the governing authority of the municipal corporation or county wherein the cemetery or burial ground is located, which shall have authority to permit such activity except as provided in Code Section 36-72-14.

36-72-5. Application for a permit shall include, at a minimum, the following information:

- (1) Evidence of ownership of the land on which the cemetery or burial ground is located in the form of a legal opinion based upon a title search;
- (2) A report prepared by an archeologist stating the number of graves believed to be present and their locations as can be determined from the use of minimally invasive investigation techniques, including remote sensing methods and the use of metal probes, which activities shall not require a permit;
- (3) A survey prepared by or under the direction of a registered surveyor showing the location and boundaries of the cemetery or burial ground based on an archeologist's report;
- (4) A plan prepared by a genealogist for identifying and notifying the descendants of those buried or believed to be buried in such cemetery; and
- (5) A proposal for mitigation or avoidance of the effects of the planned activity on the cemetery or burial ground. If the proposal includes relocation of any human remains or burial objects, the proposal shall specify the method of disinterment, the location and method of disposition

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of the remains, the approximate cost of the process, and the approximate number of graves affected.

36-72-6. The applicant shall implement its plan for identifying and locating descendants no later than the date the application is submitted to the governing authority. The governing authority shall review the applicant's plan for identifying and notifying the descendants of the deceased persons and may require as a condition for issuing a permit that the applicant implement additional reasonable attempts to identify and locate

descendants. Notice to possible descendants shall include information on how to contact the governing authority and a summary of the rights of descendants under this chapter. The governing authority shall promptly inform any descendant who indicates an interest in the disposition of the human remains and burial objects regarding any proposals for mitigation, the terms of any permit issued, the time and place of any scheduled public hearings, and appeal procedures and events.

36-72-7. (a) Within 15 days after it is satisfied that all reasonable effort has been made to notify descendants, as provided in Code Section 36-72-6, and following receipt of the recommendations of a board or commission created pursuant to Code Section 36-72-9, the governing authority shall schedule a public hearing at which any interested party or citizen may appear and be given an opportunity to be heard. In addition to the notice required in Code Section 36-72-6, notice of the public hearing shall be advertised in the legal organ of the jurisdiction once a week for the two consecutive weeks immediately preceding the week in which any such hearing is held.

(b) Within 30 days after the conclusion of the public hearing, the governing authority shall notify the applicant in writing of its decision. The governing authority shall have the authority to deny the application with written reasons therefor, to issue a permit adopting the application in whole or in part, or to issue a permit which may include additional requirements to mitigate the proposed activity's adverse effects on the cemetery or burial ground, including but not limited to relocation of the proposed project, reservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land, and respectful disinterment and proper disposition of

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the human remains. The governing authority may adopt the applicant's proposal for mitigation.

36-72-8. The governing authority shall consider the following in making its determination:

- (1) The presumption in favor of leaving the cemetery or burial ground undisturbed;
- (2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;
- (3) The economic and other costs of mitigation;

- (4) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;
- (5) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment; and
- (6) Any other compelling factors which the governing authority deems relevant.

36-72-9. The governing authority of any county whose population is in excess of 290,000 as established by the United States decennial census of 1980 or any such future census shall be authorized to establish or empower a new or existing commission or board to hear and review any application filed pursuant to Code Section 36-72-5. The board or commission shall conduct a public hearing within 60 days of the filing of an application and shall make a written recommendation to the governing authority no later than 15 days following the public hearing with respect to the sufficiency of the notice to descendants, the plan for mitigation, the disturbance and adverse effects on the cemetery or burial ground, the survey of the cemetery, and plans for disinterment and reinterment.

36-72-10. The governing authority shall be authorized to impose an application fee which shall reflect the cost to the

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governing authority for processing and reviewing the application including, but not limited to, the cost of hiring an attorney, independent archeologist, and independent surveyor to assist in making recommendations regarding the applicant's plan. Such fee, if imposed, shall not exceed \$2,500.00.

36-72-11. Should any applicant or descendant be dissatisfied with a decision of the governing authority, he or she, within 30 days of such decision, may file an appeal in the superior court of the county in which the cemetery or burial ground is located in addition to the superior courts enumerated in Code Section 50-13-19.

36-72-12. Until the expiration of the time for appeal as set forth in Code Section 36-72-11, the applicant shall not begin or resume activities which comply with the permit issued by the governing authority. If an appeal is filed, the applicant may begin or resume activities which comply with the permit only upon consent of the governing authority and the party seeking judicial review or upon order of the reviewing court for good cause shown.

36-72-13. The governing authority or local law enforcement agency shall inspect as necessary to determine whether the applicant has complied with the provisions of this chapter requiring cessation or limitation of activity and with the terms of the permit as issued by the governing authority or as modified by the superior court or reviewing court.

36-72-14. (a) Notwithstanding any provisions of this chapter to the contrary, when any agency, authority, or political subdivision of the state seeks to file an application for a permit under this chapter, the superior court having jurisdiction over the real property wherein the cemetery or burial ground is located shall have exclusive jurisdiction over the permit application. The superior court shall conduct its investigation and determination of the permit in accordance with Code Sections 36-72-6 through 36-72-8.

(b) When activities of an agency, authority, or political subdivision of the state adversely affect an abandoned cemetery or a burial ground, such agency, authority, or political subdivision shall bear the cost of mitigating the harm to the abandoned

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cemetery or burial ground or reintering the human remains as a part of the cost of the project and is authorized to expend public funds for such purpose. When activities of a private person, corporation, or other private entity adversely affect an abandoned cemetery or a burial ground, such person, corporation, or other entity shall bear the cost of mitigating the harm to the cemetery or burial ground or reintering the human remains. The cost of mitigating the harm to an abandoned cemetery or to a burial ground or reintering the human remains exposed through vandalism by an unidentified vandal or through erosion may be borne by the governing authority in whose jurisdiction the abandoned cemetery or burial ground is located.

36-72-15. Any disinterment and disposition of human remains or burial objects permitted under this chapter shall be supervised, monitored, or carried out by the applicant's archeologist and shall be done at the expense of the person or entity to whom the permit is issued.

36-72-16. Any person who knowingly fails to comply with the provisions of this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall pay a fine of not more than \$5,000.00 for each grave site disturbed; provided, however, that any person who knowingly violates the provisions of Code Section 36-72-4 shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be incarcerated for not more than six months and shall pay a fine not less than \$5,000.00 for each grave site disturbed."

Section 4. This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

Section 5. All laws and parts of laws in conflict with this Act are repealed.

Approval Date: Approved April 11, 1991.