

LEGISLATIVE BILL 995

Approved by the Governor April 17, 2008

Introduced by General Affairs Committee: McDonald, 41, Chairperson; Dierks, 40; Dubas, 34; Janssen, 15; Karpisek, 32.

FOR AN ACT relating to cemeteries; to amend sections 12-401, 12-806, 12-807, 12-808, 12-810, 12-1202, and 12-1204, Reissue Revised Statutes of Nebraska, and sections 12-402, 12-805, and 12-1401, Revised Statutes Cumulative Supplement, 2006; to change and eliminate provisions relating to cemetery boards, cemetery funds, abandoned and neglected cemeteries, Indian burial grounds, and pioneer cemeteries; to harmonize provisions; to repeal the original sections; and to outright repeal section 12-806.01, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 12-401, Reissue Revised Statutes of Nebraska, is amended to read:

12-401 The mayor of any city having ~~less~~ fewer than twenty-five thousand inhabitants, by and with the consent of the council or a majority thereof, and the ~~chairman~~ chairperson of the board of trustees of any village, by and with the consent of the village board or a majority thereof, may appoint a board of not fewer than three nor more than six members, to be known as the cemetery board, from among the citizens at large of such city or village, who shall serve without pay and shall have entire control and management of any cemetery belonging to such city or village. Neither the mayor nor any member of the council, nor the ~~chairman~~ chairperson nor any member of the village board of trustees may be ~~members~~ a member of the cemetery board. At the time of establishing ~~said~~ such cemetery board, ~~two~~ approximately one-third of the members shall be appointed for a term of one year, ~~two~~ one-third for a term of two years, and ~~two~~ one-third for a term of three years, and thereafter ~~two~~ members shall be appointed ~~each year for~~ a term for terms of three years. Vacancies in the membership of the board other than through the expiration of a term shall be filled in like manner as regular members of the board are appointed. ~~for the unexpired portion of the term.~~

Sec. 2. Section 12-402, Revised Statutes Cumulative Supplement, 2006, is amended to read:

12-402 (1) The mayor and council or the board of trustees, for the purpose of defraying the cost of the care, management, improvement, beautifying, and welfare of such cemeteries and the inhabitants thereof, may each year levy a tax not exceeding five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village subject to taxation for general purposes. The tax shall be collected and paid to the city or village as taxes for general purposes are collected and paid to the city or village. All taxes collected for this purpose shall constitute and be known as the cemetery fund and shall be used for the general care, management, improvement, beautifying, and welfare of such cemetery and the inhabitants thereof. Warrants upon this fund shall be drawn by the cemetery board and shall be paid by the city or village treasurer. The city council or the board of trustees may issue a warrant from the cemetery fund if a payment is due and the cemetery board is not scheduled to meet prior to such due date to authorize the warrant.

(2) If the mayor and council or the board of trustees sets aside the proceeds from the sale of lots as a perpetual fund, the principal of the fund that is attributable to such proceeds, or attributable to any money which has come to the fund by donation, bequest, or otherwise that does not prohibit such use, may be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than twenty-five percent of such principal is so used in any fiscal year and no more than thirty-five percent of such principal is so used in any period of ten consecutive fiscal years.

(3) This section does not limit the use of any money that comes to the city or village by donation, bequest, or otherwise that is not designated to be credited to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.

Sec. 3. Section 12-805, Revised Statutes Cumulative Supplement, 2006, is amended to read:

12-805 The county board ~~may~~ shall expend money from the general fund of the county for the care and maintenance of each abandoned ~~and~~ or neglected

cemetery. Such amount shall not exceed one thousand dollars per cemetery in a calendar year, and Indian burial ground as follows: (1) Not to exceed five hundred dollars in any one year when the cemetery is totally abandoned; or (2) not to exceed four hundred dollars in any one year when the cemetery is partially abandoned. Such care and maintenance may include the repair or building of fences and annual spraying for the control of weeds and brush.

Sec. 4. Section 12-806, Reissue Revised Statutes of Nebraska, is amended to read:

12-806 The county board may include in the budget for the next fiscal year an item for care of abandoned and or neglected cemeteries as provided in section 12-805.

Sec. 5. Section 12-807, Reissue Revised Statutes of Nebraska, is amended to read:

12-807 The county board shall expend money from the general fund of the county for the continuous preservation and maintenance, including mowing, of an abandoned and or neglected pioneer cemetery when petitioned to do so by thirty-five adult residents of the county. The county board shall publish notice of such petition in one issue of the official newspaper published and of general circulation in the county at least ten days prior to the day when the matter will be heard by the county board.

Sec. 6. Section 12-808, Reissue Revised Statutes of Nebraska, is amended to read:

12-808 For purposes of sections 12-807 to 12-810, an abandoned and or neglected pioneer cemetery shall be defined according to the following criteria:

(1) Such cemetery was founded, or the land upon which such cemetery is situated was given, granted, donated, sold, or deeded to the founders of the cemetery prior to January 1, 1900;

(2) Such cemetery contains the grave or graves of a person or persons who were homesteaders, immigrants from a foreign nation, prairie farmers, pioneers, sodbusters, first generation Nebraskans, or Civil War veterans; and

(3) Such cemetery has been generally abandoned and or neglected for a period of at least twenty five consecutive years.

Sec. 7. Section 12-810, Reissue Revised Statutes of Nebraska, is amended to read:

12-810 Any county affected by sections 12-807 to 12-810 shall provide for at least one mowing annually of such cemetery each year, and one of such mowings shall occur within a period of two weeks prior to Memorial Day. Additional mowings shall be at the discretion of the county board, and each additional mowing may be subject to a public hearing at which the need for the additional mowing shall be presented to the county board. Within five years after maintenance and preservation of such cemetery is commenced by such county, a historical marker giving the date of the establishment of the cemetery and a short history of the cemetery ~~shall~~ may be placed at the site of such cemetery. One directional marker showing the way to such cemetery may be placed on the nearest state highway to such cemetery.

Sec. 8. Section 12-1202, Reissue Revised Statutes of Nebraska, is amended to read:

12-1202 The Legislature hereby finds and declares that:

(1) Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction than well-tended and well-marked cemeteries;

(2) Although existing law prohibits removal, concealment, or abandonment of any dead human body and provides for the care and maintenance of abandoned and or neglected ~~Indian~~ cemeteries and ~~burial grounds~~ and pioneer cemeteries, additional statutory guidelines and protections are in the public interest;

(3) Existing law on cemeteries reflects the value placed on preserving human burial sites but does not clearly provide equal and adequate protection or incentives to assure preservation of all human burial sites in this state;

(4) An unknown number of unmarked human burial sites containing the remains of pioneers, settlers, and Indians are scattered throughout the state;

(5) No adequate procedure regarding the treatment and disposition of human skeletal remains from unmarked graves exists to protect the interests of relatives or other interested persons; and

(6) There are scientific, educational, religious, and cultural interests in the remains of our ancestors and those interests, whenever possible, should be served.

Sec. 9. Section 12-1204, Reissue Revised Statutes of Nebraska, is amended to read:

12-1204 For purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act:

(1) Burial goods shall mean any item or items reasonably believed to have been intentionally placed with the human skeletal remains of an individual at the time of burial and which can be traced with a reasonable degree of certainty to the specific human skeletal remains with which it or they were buried;

(2) Human burial site shall mean the specific place where any human skeletal remains are buried and the immediately surrounding area;

(3) Human skeletal remains shall mean the body or any part of the body of a deceased human in any stage of decomposition;

(4) Indian tribe shall mean any federally recognized or state-recognized Indian tribe, band, or community;

(5) Professional archaeologist shall mean a person having a postgraduate degree in archaeology, anthropology, history, or a related field with a specialization in archaeology and with demonstrated ability to design and execute an archaeological study and to present the written results and interpretations of such a study in a thorough, scientific, and timely manner;

(6) Reasonably identified and reasonably identifiable shall mean identifiable, by a preponderance of the evidence, as to familial or tribal origin based on any available archaeological, historical, ethnological, or other direct or circumstantial evidence or expert opinion;

(7) Society shall mean the Nebraska State Historical Society; and

(8) Unmarked human burial shall mean any interment by whatever means of human skeletal remains for which there exists no grave marker, including burials located in abandoned ~~and~~ or neglected cemeteries.

Sec. 10. Section 12-1401, Revised Statutes Cumulative Supplement, 2006, is amended to read:

12-1401 (1) The Nebraska State Historical Society shall establish and maintain the Statewide Cemetery Registry. The registry shall be located in the office of the Nebraska State Historical Society and shall be made available to the public. The purpose of the registry is to provide a central data bank of accurate and current information regarding the location of cemeteries, burial grounds, mausoleums, and columbaria in the state.

(2)(a) Each city, village, township, county, church, fraternal and benevolent society, cemetery district, cemetery association, mausoleum association, and any other person owning, operating, or maintaining a cemetery, pioneer cemetery, abandoned ~~and~~ or neglected cemetery, ~~Indian burial ground,~~ mausoleum, or columbarium shall register with the Statewide Cemetery Registry.

(b) Except as provided in subdivision (c) of this subsection, the registration shall include the following:

(i) The location or address of the cemetery, ~~burial ground,~~ mausoleum, or columbarium;

(ii) A plat of the cemetery, ~~burial ground,~~ mausoleum, or columbarium grounds, including any lots, graves, niches, or crypts, if available;

(iii) The name and address of the person or persons representing the entity owning, operating, or maintaining the cemetery, ~~burial ground,~~ mausoleum, or columbarium;

(iv) The inception date of the cemetery, ~~burial ground,~~ mausoleum, or columbarium, if available; and

(v) If the cemetery, ~~burial ground,~~ mausoleum, or columbarium is abandoned, the abandonment date, if available.

(c) The information required in subdivision (b) of this subsection regarding the operation and maintenance of a cemetery, ~~burial ground,~~ mausoleum, or columbarium prior to January 1, 2006, shall be required only if such information is reasonably available to the registering entity.

(d) The entity owning, operating, or maintaining the cemetery, ~~burial ground,~~ mausoleum, or columbarium may include information regarding the history of the operation of the cemetery, ~~burial ground,~~ mausoleum, or columbarium.

(3) The entity owning, operating, or maintaining a registered cemetery, ~~burial ground,~~ mausoleum, or columbarium shall update its entry in the registry every ten years following the initial registration by the entity.

Sec. 11. Original sections 12-401, 12-806, 12-807, 12-808, 12-810, 12-1202, and 12-1204, Reissue Revised Statutes of Nebraska, and sections 12-402, 12-805, and 12-1401, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 12. The following section is outright repealed: Section 12-806.01, Reissue Revised Statutes of Nebraska.