

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 995

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

Read first time January 16, 2008

Committee: General Affairs

A BILL

1 FOR AN ACT relating to cemeteries; to amend sections 12-401,
2 12-806, 12-807, 12-808, 12-810, 12-1202, and 12-1204,
3 Reissue Revised Statutes of Nebraska, and sections
4 12-402, 12-805, and 12-1401, Revised Statutes Cumulative
5 Supplement, 2006; to change and eliminate provisions
6 relating to cemetery boards, cemetery funds, abandoned
7 and neglected cemeteries, Indian burial grounds, and
8 pioneer cemeteries; to harmonize provisions; to repeal
9 the original sections; and to outright repeal section
10 12-806.01, Reissue Revised Statutes of Nebraska.

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

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

3 12-401 The mayor of any city having less than twenty-five
4 thousand inhabitants, by and with the consent of the council or a
5 majority thereof, and the chairman of the board of trustees of any
6 village, by and with the consent of the village board or a majority
7 thereof, may appoint a board of not less than three nor more
8 than six members, to be known as the cemetery board, from among
9 the citizens at large of such city or village, who shall serve
10 without pay and shall have entire control and management of any
11 cemetery belonging to such city or village. Neither the mayor, ~~nor~~
12 any member of the council, nor the chairman nor any member of the
13 village board of trustees may be ~~members~~ a member of the cemetery
14 board. At the time of establishing said such cemetery board, ~~two~~
15 approximately one-third of the members shall be appointed for a
16 term of one year, ~~two~~ one-third for a term of two years, and ~~two~~
17 one-third for a term of three years, and thereafter ~~two~~ members
18 shall be appointed each year ~~for a term~~ for terms of three years.
19 Vacancies in the membership of the board other than through the
20 expiration of a term shall be filled ~~in like manner as regular~~
21 ~~members of the board are appointed.~~ for the unexpired portion of
22 the term.

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

25 12-402 (1) The mayor and council or the board of

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

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

1 ten consecutive fiscal years.

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

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

9 12-805 The county board ~~may~~ shall expend money from the
10 general fund of the county for the care and maintenance of each
11 abandoned ~~and or~~ neglected cemetery. Such amount shall not exceed
12 one thousand dollars per cemetery in a calendar year. and Indian
13 burial ground as follows: (1) Not to exceed five hundred dollars
14 in any one year when the cemetery is totally abandoned; or (2) not
15 to exceed four hundred dollars in any one year when the cemetery
16 is partially abandoned. Such care and maintenance may include the
17 repair or building of fences and annual spraying for the control of
18 weeds and brush.

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

21 12-806 The county board may include in the budget for the
22 next fiscal year an item for care of abandoned ~~and or~~ neglected
23 cemeteries as provided in section 12-805.

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

1 12-807 The county board shall expend money from the
2 general fund of the county for the continuous preservation and
3 maintenance, including mowing, of an abandoned and or neglected
4 pioneer cemetery when petitioned to do so by thirty-five adult
5 residents of the county. Notice of such petition shall be published
6 in one issue of the official newspaper published and of general
7 circulation in the county at least ten days prior to the day when
8 the matter will be heard by the county board.

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

11 12-808 For purposes of sections 12-807 to 12-810, an
12 abandoned and or neglected pioneer cemetery shall be defined
13 according to the following criteria:

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

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

21 (3) Such cemetery has been generally abandoned and or
22 neglected for a period of at least ~~twenty~~ five consecutive years.
23 Minor or one-time maintenance of such cemetery shall not toll the
24 time period required under this subdivision.

25 Sec. 7. Section 12-810, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 12-810 Any county affected by sections 12-807 to 12-810
3 shall provide for ~~one mowing annually~~ four mowings of such cemetery
4 each year, one of which to occur within a period of two weeks
5 prior to Memorial Day. Within five years after maintenance and
6 preservation of such cemetery is commenced by such county, a
7 historical marker giving the date of the establishment of the
8 cemetery and a short history of the cemetery ~~shall~~ may be placed at
9 the site of such cemetery. One directional marker showing the way
10 to such cemetery may be placed on the nearest state highway to such
11 cemetery.

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

14 12-1202 The Legislature hereby finds and declares that:

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

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

24 (3) Existing law on cemeteries reflects the value placed
25 on preserving human burial sites but does not clearly provide equal

1 and adequate protection or incentives to assure preservation of all
2 human burial sites in this state;

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

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

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

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

15 12-1204 For purposes of the Unmarked Human Burial Sites
16 and Skeletal Remains Protection Act:

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

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

25 (3) Human skeletal remains shall mean the body or any

1 part of the body of a deceased human in any stage of decomposition;

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

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

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

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

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

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

23 12-1401 (1) The Nebraska State Historical Society shall
24 establish and maintain the Statewide Cemetery Registry. The
25 registry shall be located in the office of the Nebraska State

1 Historical Society and shall be made available to the public.
2 The purpose of the registry is to provide a central data bank
3 of accurate and current information regarding the location of
4 cemeteries, burial grounds, mausoleums, and columbaria in the
5 state.

6 (2)(a) Each city, village, township, county, church,
7 fraternal and benevolent society, cemetery district, cemetery
8 association, mausoleum association, and any other person owning,
9 operating, or maintaining a cemetery, pioneer cemetery, abandoned
10 and or neglected cemetery, Indian burial ground, mausoleum, or
11 columbarium shall register with the Statewide Cemetery Registry,
12 except that a cemetery or burial ground whose records may be
13 withheld pursuant to subdivision (13) of section 84-712.05 shall
14 not be required to be registered.

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

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

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

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

25 (iv) The inception date of the cemetery, ~~burial ground,~~

1 mausoleum, or columbarium, if available; and

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

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

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

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

17 Sec. 11. Original sections 12-401, 12-806, 12-807,
18 12-808, 12-810, 12-1202, and 12-1204, Reissue Revised Statutes
19 of Nebraska, and sections 12-402, 12-805, and 12-1401, Revised
20 Statutes Cumulative Supplement, 2006, are repealed.

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