

Senate Bill 391

By: Senators Williams of the 25th, Hatchett of the 50th, Anderson of the 24th, Burns of the 23rd and Goodman of the 8th

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 31, 36, and 44 of the Official Code of Georgia Annotated, relating to health,
2 local government, and property, respectively, so as to provide regulations and protections of
3 cemeteries and burial grounds; to revise procedures concerning the issuance of permits for
4 the disinterment and reinterment of human remains; to revise procedures concerning the
5 issuance of permits for the disturbance of abandoned cemeteries; to provide civil remedies
6 for failures to obtain such permits; to provide for the issuance of permits for the
7 establishment of family burial plots; to provide minimum requirements of family burial plots;
8 to provide civil remedies for the failure to obtain such permits; to provide for a civil action
9 regarding the ability to enter upon land for the purpose of visiting, caring for, or maintaining
10 ancestral grave sites; to provide for a civil action regarding the ability to enter upon land for
11 the purpose of discovering ancestral grave sites and conducting genealogical research in
12 connection with ancestral grave sites; to provide definitions; to provide statutory
13 construction; to conform cross-references; to provide for related matters; to repeal conflicting
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

S. B. 391

- 1 -

16 **PART I**

17 **SECTION 1-1.**

18 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code
19 Section 31-10-1, relating to definitions, by adding two new paragraphs to read as follows:

20 "(6.1) 'Human remains' shall have the same meaning as provided in Code
21 Section 10-14-3."

22 "(8.1) 'Licensed funeral director' means an individual licensed in this state to practice
23 funeral directing pursuant to the provisions of Chapter 18 of Title 43."

24 **SECTION 1-2.**

25 Said title is further amended in Code Section 31-10-20, relating to permits for disposition,
26 disinterment, and reinterment, by revising subsection (f) as follows:

27 "(f)(1) Except as provided in paragraph (4) of this subsection, a permit ~~Authorization~~ for
28 disinterment and reinterment shall be required prior to the disinterment of ~~a dead body~~
29 or fetus human remains. ~~Such authorization shall be issued by~~ Application for such a
30 permit shall be made on a form prescribed by the department and submitted to the local
31 registrar ~~to a~~, who shall issue such permit only if:

32 (A) The application provides the following information:

33 (i) The identification of the human remains to be disinterred, if known;

34 (ii) The location where the human remains are to be disinterred;

35 (iii) The location where the human remains are to be reinterred or otherwise finally
36 disposed of; and

37 (iv) Such other information as required by the department; and

38 (B)(i) The person or persons who has the right to control the disposition of the human
39 remains as provided in Code Section 31-21-7 consents to the disinterment and
40 reinterment or other final disposition of such human remains;

41 (ii) The applicant submits a disturbance permit issued pursuant to Chapter 72 of
 42 Title 36 authorizing the disinterment and reinterment or other final disposition of the
 43 human remains; or

44 (iii) The applicant submits an order from a court of competent jurisdiction
 45 authorizing the disinterment and reinterment or other final disposition of the human
 46 remains.

47 (2) Any disinterment and reinterment or other final disposition for which a permit is
 48 issued under this subsection shall be supervised, monitored, or carried out by a licensed
 49 funeral director or other person acting as such, upon proper application, in the county in
 50 which the dead body or dead fetus was originally interred and a.

51 (3) A local registrar who issues such authorization a permit for disinterment and
 52 reinterment pursuant to this subsection shall not be civilly or criminally liable therefor
 53 if it such permit is issued in good faith.

54 (4) A permit for disinterment and reinterment provided for in this subsection shall not
 55 be required when disinterment and reinterment are human remains are disinterred and
 56 reinterred in the same cemetery."

57 **SECTION 1-3.**

58 Said title is further amended by revising Code Section 31-21-6, relating to notification of law
 59 enforcement agency upon disturbance, destruction, or debasement of human remains, as
 60 follows:

61 "31-21-6.

62 (a) Any person who knows or has reason to believe that interred human remains have been
 63 or are being disturbed, destroyed, defaced, mutilated, removed, or exposed without a permit
 64 issued pursuant to Chapter 72 of Title 36, Code Section ~~36-72-4~~, 12-3-52, or Code
 65 Section 12-3-82, unless such activity is otherwise authorized by law without such a permit,
 66 or without written permission of the landowner for an archeological excavation on the site

67 ~~by an archeologist~~ or not in compliance with Section 106 of the National Historic
 68 Preservation Act, as amended, and any person who accidentally or inadvertently discovers
 69 or exposes human remains shall immediately notify the local law enforcement agency with
 70 jurisdiction in the area where the human remains are located.

71 (b) Any law enforcement agency notified of the discovery or disturbance, destruction,
 72 defacing, mutilation, removal, or exposure of interred human remains shall immediately
 73 report such notification to the coroner or medical examiner of the county where the human
 74 remains are located, who shall determine whether investigation of the death is required
 75 under Code Section 45-16-24. If investigation of the death is not required, the coroner or
 76 medical examiner shall immediately notify the local governing authority of the county or
 77 ~~municipality~~ municipal corporation in which the remains are found and the Department of
 78 Natural Resources. If the remains are believed to be those of one or more aboriginal or
 79 prehistoric ancestors of ~~or~~ American Indians, then the Department of Natural Resources
 80 shall notify the Council on American Indian Concerns. ~~All~~ No additional land-disturbing
 81 activity likely to further disturb the human remains shall ~~cease until~~ occur unless:

82 (1) The county coroner or medical examiner, ~~after determining~~ if it is determined that
 83 investigation of the death is required under Code Section 45-16-24, has completed
 84 forensic examination of the site; and

85 (2)(A) A permit is issued ~~for land use change and disturbance~~ pursuant to ~~Code~~
 86 ~~Section 36-72-4~~ Chapter 72 of Title 36;

87 (B) ~~A~~ a permit is issued or a contract is let pursuant to subsection (d) of Code
 88 Section 12-3-52; ~~or~~

89 (C) A permit is issued pursuant to subsection (b) of Code Section 12-3-82 ~~written~~
 90 ~~permission is obtained from the landowner for the conduct of an archeological~~
 91 ~~excavation; or~~

92 (3) ~~If such a permit is not sought, the~~ (D) The Department of Natural Resources
 93 arranges with the landowner for the protection of the remains; or

94 (E) Such activity is otherwise authorized by law without complying with one of the
95 requirements listed in subparagraphs (A) through (D) of this paragraph.

96 (c) The provisions of this Code section shall not apply to normal farming activity
97 including, but not limited to, plowing, disking, harvesting, and grazing of livestock."

98 **SECTION 1-4.**

99 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
100 by revising Chapter 72, relating to abandoned cemeteries and burial grounds, as follows:

101 "CHAPTER 72

102 36-72-1.

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

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

115 36-72-2.

116 As used in this chapter, the term:

- 117 (1) 'Abandoned cemetery' means a cemetery ~~which shows~~ or burial ground:
- 118 (A) That shows signs of neglect including, without limitation, the unchecked growth
- 119 of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave
- 120 markers or boundaries and for which no person can be found who is legally responsible
- 121 and financially capable of the upkeep of such cemetery;
- 122 (B) In which no interment, entombment, or inurnment of human remains has occurred
- 123 for a period of not less than 25 years;
- 124 (C) In which no remains of a deceased human being that has a known living lineal
- 125 descendant are interred, entombed, or inurned, unless such lineal descendant has
- 126 abandoned or waived their rights and interests in such remains;
- 127 (D) That has not been dedicated for public use, as provided in Code Section 44-5-230,
- 128 unless such cemetery or burial ground is no longer known, recognized, or respected by
- 129 the public as a cemetery or burial ground; and
- 130 (E) That is not a perpetual care cemetery registered with the Secretary of State pursuant
- 131 to Chapter 14 of Title 10, the 'Georgia Cemetery and Funeral Services Act of 2000,' or
- 132 for which perpetual care has been promised or guaranteed.
- 133 (2) 'Archeologist' means any person who is:
- 134 (A) A member of or meets the criteria for membership in the Society of Professional
- 135 Archaeologists and can demonstrate experience in the excavation and interpretation of
- 136 human graves; or
- 137 (B) Employed on July 1, 1991, by the state or by any county or municipal governing
- 138 authority as an archeologist.
- 139 (3) 'Burial ground' means an area dedicated to and used for interment of human remains.
- 140 The term shall include privately owned burial plots, individually and collectively, once
- 141 human remains have been buried therein. The fact that such ~~the~~ area was used for burial
- 142 purposes shall be evidence that it was set aside for burial purposes.

- 143 (4) 'Burial object' means any item reasonably believed to have been intentionally placed
144 with the human remains at the time of burial or interment or any memorial, tombstone,
145 grave marker, or shrine which may have been added subsequent to interment. Such term
146 also means any inscribed or uninscribed marker, coping, curbing, enclosure, fencing,
147 pavement, shelter, wall, stoneware, pottery, or other grave object erected or deposited
148 incident to or subsequent to interment.
- 149 (5) 'Cemetery' or 'cemeteries' means any land or structure in this state dedicated to and
150 used for interment, entombment, or inurnment of human remains. It may be either a
151 burial park for earth interments or a mausoleum for vault or crypt interments or a
152 combination of one or more thereof.
- 153 (6) 'Descendant' means ~~a person~~ an individual or group of ~~persons~~ individuals related to
154 a deceased human being by blood or adoption in accordance with Title 19.
- 155 ~~(7)~~ (7) 'Entombment' shall have the same meaning as provided in Code Section 10-14-3.
- 156 ~~(7)(8)~~ (8) 'Genealogist' means a person who traces or studies the descent of persons or
157 families and prepares a probative record of such descent.
- 158 ~~(8)(9)~~ (9) 'Human remains' or 'remains' means the bodies of deceased human beings in any
159 stage of decomposition, including cremated remains.
- 160 (10) 'Interment' shall have the same meaning as provided in Code Section 10-14-3.
- 161 (11) 'Inurnment' shall have the same meaning as provided in Code Section 10-14-3.
- 162 (12) 'Licensed funeral director' means an individual licensed in this state to practice
163 funeral directing pursuant to the provisions of Chapter 18 of Title 43.
- 164 (13) 'Lineal descendant' means an individual who is a direct descendant of a deceased
165 human being by blood or adoption in accordance with Title 19, such as a child,
166 grandchild, great-grandchild, and so on. Such term does not include a collateral
167 descendant of a deceased human being, such as a sister, brother, uncle, aunt, niece,
168 nephew, or cousin.
- 169 (14) 'Perpetual care' shall have the same meaning as provided in Code Section 10-14-3.

170 ~~(9)~~(15) 'Preserve and protect' means to keep safe from destruction, peril, or other
 171 adversity and may include the placement of signs, markers, fencing, or other such
 172 appropriate features so as to identify the site as a cemetery or burial ground and may also
 173 include the cleaning, maintenance, and upkeep of the site so as to aid in its preservation
 174 and protection.

175 36-72-3.

176 (a) Counties, anywhere within the county boundaries, and municipalities ~~municipal~~
 177 corporations, anywhere within the municipal boundaries, are authorized, jointly and
 178 severally, to preserve and protect any ~~abandoned~~ cemetery or any burial ground which the
 179 county or ~~municipality~~ municipal corporation determines has been abandoned or is not
 180 being maintained by the person who is legally responsible for its upkeep, whether or not
 181 that person is financially capable of doing so, to expend public money in connection
 182 therewith, to provide for reimbursement of such funds by billing any legally responsible
 183 person or levying upon any of his property as authorized by local ordinance, and to
 184 exercise the power of eminent domain to acquire any interest in land necessary for that
 185 purpose.

186 (b) Regardless of whether a county or municipal corporation takes any action to preserve
 187 and protect cemeteries or burial grounds as authorized by subsection (a) of this Code
 188 section, the governing authority of such county or municipal corporation shall:

189 (1) Accept any application for a disturbance permit under this chapter that is submitted
 190 in accordance with the provisions of Code Section 36-72-5;

191 (2) Consider any such application at a public hearing held in accordance with the
 192 provisions of subsection (a) of Code Section 36-72-7;

193 (3) Render a written decision on any such application in accordance with the provisions
 194 of subsection (b) of Code Section 36-72-7; and

195 (4) Perform any other action with respect to any such application that is required under
196 the provisions of this chapter.

197 36-72-4.

198 (a) Except as otherwise authorized by law, no ~~No~~ known cemetery, burial ground, human
199 remains, or burial object shall be knowingly disturbed by the owner or occupier of the land
200 on which the cemetery or burial ground is located ~~for the purposes of developing or~~
201 ~~changing the use of any part of such land~~ unless a disturbance permit under this chapter is
202 first obtained from the governing authority of the county or municipal corporation or
203 ~~county~~ wherein the cemetery or burial ground is located, which, except as provided in Code
204 Section 36-72-14, shall have authority to issue such permit such activity except as provided
205 ~~in Code Section 36-72-14~~ in accordance with the provisions of this chapter.

206 (b) The prohibition contained in subsection (a) of this Code section against knowingly
207 disturbing any known cemetery, burial ground, human remains, or burial object without
208 first obtaining a disturbance permit under this chapter shall not be impacted by the decision
209 or lack thereof of a county or municipal corporation to expend public money, exercise the
210 power of eminent domain, or take any other action to preserve and protect cemeteries or
211 burial grounds as authorized by Code Section 36-72-3, and the lack of such action taken
212 by a county or municipal corporation shall not authorize the disturbance of any known
213 cemetery, burial ground, human remains, or burial object without first obtaining a
214 disturbance permit under this chapter.

215 (c) No disturbance permit shall be issued under this chapter in connection with any
216 cemetery or burial ground or any human remains or burial objects therein unless such
217 cemetery or burial ground constitutes an abandoned cemetery as defined in this chapter.

218 36-72-5.

219 (a) The governing authority of a county or municipal corporation may prescribe the form
220 and manner of an application for a disturbance permit under this chapter. Such application
221 Application for a permit shall include, at a minimum, the following information:

222 (1) Evidence of ownership of the land on which the cemetery or burial ground is located
223 in the form of a legal opinion based upon a title search;

224 (2) Evidence that the cemetery or burial ground constitutes an abandoned cemetery as
225 defined in this chapter;

226 (3) A report prepared by an archeologist stating the number of graves believed to be
227 present in the cemetery or burial ground and their locations as can be determined from
228 the use of minimally invasive investigation techniques, including remote sensing methods
229 and the use of metal probes, which activities shall not require a disturbance permit;

230 ~~(3)~~(4) A survey prepared by or under the direction of a registered surveyor showing the
231 location and boundaries of the cemetery or burial ground based on an archeologist's
232 report;

233 ~~(4)~~(5) A plan prepared by a genealogist for identifying and notifying the descendants of
234 those buried or believed to be buried in such cemetery or burial ground. If those buried
235 or believed to be buried are of aboriginal or American Indian descent, the genealogist, in
236 preparing the notification plan, shall consult with the Council on American Indian
237 Concerns created pursuant to Code Section 44-12-280 and shall include in the notification
238 plan not only any known descendants of those presumed buried but also any American
239 Indian tribes as defined in paragraph (2) of Code Section 44-12-260 that are culturally
240 affiliated; and

241 ~~(5)~~(6) A proposal for mitigation or avoidance of the effects of the planned activity on the
242 cemetery or burial ground. If the proposal includes relocation of any human remains or
243 burial objects, the proposal shall specify the method of disinterment, the location and

244 method of disposition of the remains, the approximate cost of the process, and the
245 approximate number of graves affected.

246 (b) If the governing authority of a county or municipal corporation does not prescribe the
247 form and manner of an application for a disturbance permit under this chapter, a person
248 may apply for such a permit by submitting the information required under subsection (a)
249 of this Code section in writing to such governing authority.

250 36-72-6.

251 (a) An ~~The~~ applicant for a disturbance permit under this chapter shall implement its plan
252 for identifying and ~~locating~~ notifying descendants of those buried or believed to be buried
253 in the cemetery or burial ground that is the subject of the application no later than the date
254 the application is submitted to the governing authority of the county or municipal
255 corporation where such burial ground or cemetery is located. ~~The~~ Such governing
256 authority shall review the applicant's plan for identifying and notifying ~~the~~ such
257 descendants ~~of the deceased persons~~ and may require as a condition for issuing a
258 disturbance permit that the applicant implement additional reasonable attempts to identify
259 and ~~locate~~ notify such descendants.

260 (b) Notice to possible descendants of an application for a disturbance permit under this
261 chapter shall include:

- 262 (1) The location of the cemetery or burial ground that is the subject of the application;
263 (2) Identification of the applicant;
264 (3) A description of the planned activity for which a disturbance permit under this
265 chapter is sought;
266 (4) Proposals to mitigate the adverse effects of such activity on the cemetery or burial
267 ground, or on the human remains or burial objects located therein;
268 (5) Any plans for disinterment and reinterment of any human remains located in the
269 cemetery or burial ground;

270 (6) Information ~~information~~ on how to contact the governing authority to which the
 271 application was submitted; and

272 (7) A ~~a~~ summary of the rights of descendants under this chapter, including without
 273 limitation the right to contest that the cemetery or burial ground that is the subject of the
 274 application constitutes an abandoned cemetery as defined in this chapter.

275 (c) The governing authority of a county or municipal corporation shall, after receiving an
 276 application for a disturbance permit under this chapter, promptly inform any descendant
 277 who indicates an interest in the disposition of the human remains and burial objects
 278 cemetery or burial ground that is the subject of the application, or any human remains or
 279 burial objects located therein, regarding any proposals for mitigation, the terms of any
 280 permit issued, the time and place of any scheduled public hearings on the application,
 281 proposals for mitigation, a decision on the application, the terms of any disturbance permit
 282 issued, and appeal procedures and events.

283 36-72-7.

284 ~~Within 15~~ An application for a disturbance permit under this chapter shall be
 285 considered by the governing authority of the county or municipal corporation at a public
 286 hearing to be held within 45 days after it such governing authority is satisfied that all
 287 reasonable effort has been made to notify descendants, as provided in Code
 288 Section 36-72-6, and following receipt of the recommendations of a any board or
 289 commission created pursuant to Code Section 36-72-9, the governing authority shall
 290 schedule a public hearing at which any. Any interested party or citizen may appear and be
 291 given an opportunity to be heard at such public hearing and, in. ~~In~~ addition to the notice
 292 required in Code Section 36-72-6, notice of ~~the~~ such public hearing shall be advertised in
 293 the legal organ of the jurisdiction once a week for the ~~two~~ four consecutive weeks
 294 immediately preceding the week in which ~~any~~ such hearing is held.

295 (b) Within 30 days after the conclusion of ~~the~~ a public hearing held pursuant to
 296 subsection (a) of this Code section on an application for a disturbance permit under this
 297 chapter, the governing authority shall notify the applicant in writing of its decision on the
 298 application. The governing authority shall have the authority to deny the application with
 299 written reasons therefor, to issue a disturbance permit adopting the application in whole or
 300 in part, or to issue a disturbance permit which may include additional requirements to
 301 mitigate the proposed activity's adverse effects on the cemetery or burial ground, including
 302 but not limited to relocation of the proposed project, reservation of the cemetery or burial
 303 ground as an undeveloped area within ~~the proposed development or use of~~ the larger parcel
 304 of land, and respectful disinterment and proper disposition of the human remains. The
 305 governing authority may adopt the applicant's proposal for mitigation.

306 36-72-8.

307 The governing authority of a county or municipal corporation shall consider the following
 308 in making its determination on an application for a disturbance permit under this chapter:

- 309 (1) The presumption in favor of leaving the cemetery or burial ground and the human
 310 remains and burial objects therein undisturbed;
- 311 (2) The rights, interests, concerns, and comments of any descendants of those buried in
 312 the burial ground or cemetery;
- 313 (3) The rights, interests, concerns, and comments of ~~and~~ any other interested parties or
 314 members of the public;
- 315 (4) Whether the cemetery or burial ground constitutes an abandoned cemetery as defined
 316 in this chapter;
- 317 ~~(3)~~(5) The economic and other costs of mitigation;
- 318 ~~(4)~~(6) The adequacy of the applicant's plans for disinterment and proper disposition of
 319 any human remains or burial objects;

320 ~~(5)~~(7) The balancing of the applicant's interest in ~~disinterment~~ the activities for which
321 the disturbance permit is sought with the public's and any descendant's interest in the
322 value of the undisturbed cultural and natural environment of the cemetery or burial
323 ground that is the subject of the application; and

324 ~~(6)~~(8) Any other compelling factors which the governing authority deems relevant.

325 36-72-9.

326 (a) The governing authority of any county whose population is in excess of 290,000 as
327 established by the United States decennial census of 1980 or any such future census shall
328 be authorized to establish or empower a new or existing commission or board to hear and
329 review any application ~~filed pursuant to~~ for a disturbance permit submitted in accordance
330 with the provisions of Code Section 36-72-5. The board or commission shall conduct a
331 public hearing on any such application within 60 days of the filing of ~~an~~ such application
332 and shall make a written recommendation to the governing authority no later than 15 days
333 following the public hearing on whether such application should be approved and setting
334 forth its opinion with respect to the sufficiency of the notice to descendants, whether the
335 cemetery or burial ground constitutes an abandoned cemetery as defined in this chapter, the
336 plan for mitigation, the disturbance and adverse effects on the cemetery or burial ground
337 and the human remains and burial objects therein, the survey of the cemetery or burial
338 ground, and any plans for disinterment and reinterment.

339 (b) Notice of any public hearing conducted by a board or commission pursuant to
340 subsection (a) of this Code section shall be:

341 (1) Given to any descendant who indicates an interest in the cemetery or burial ground
342 that is the subject of the application or any human remains or burial objects therein; and

343 (2) Advertised in the legal organ of the jurisdiction once a week for four consecutive
344 weeks immediately preceding the week in which any such hearing is held.

345 36-72-10.

346 ~~The~~ In connection with an application for a disturbance permit under this chapter, the
347 governing authority of a county or municipal corporation shall be authorized to impose an
348 application fee which shall reflect the cost to ~~the~~ such governing authority for processing
349 and reviewing the application including, but not limited to, the cost of hiring an attorney,
350 independent archeologist, and independent surveyor to assist in making recommendations
351 regarding the applicant's plan. Such fee, if imposed, shall not exceed \$2,500.00.

352 36-72-11.

353 Should any applicant or descendant be dissatisfied with a decision of the governing
354 authority of a county or municipal corporation on an application for a disturbance permit
355 under this chapter, he or she, within 30 days of such decision, may file an appeal in the
356 superior court of the county in which the cemetery or burial ground is located in addition
357 to the superior courts enumerated in Code Section 50-13-19.

358 36-72-12.

359 ~~Until~~ Any person who is issued a disturbance permit under this chapter shall not begin or
360 resume activities which comply with the terms of such permit until after the expiration of
361 the time for appeal as set forth in Code Section 36-72-11 or, the applicant shall not begin
362 or resume activities which comply with the permit issued by the governing authority. If if
363 an appeal is filed, the applicant may begin or resume activities which comply with the
364 permit only upon consent until after the final resolution of such appeal unless of the
365 governing authority and the party seeking judicial review or upon order of that issued such
366 permit and the party or parties that filed such appeal consent to such activities or the
367 reviewing court issues an order authorizing such activities for good cause shown.

368 36-72-13.

369 ~~The~~ In connection with an application for a disturbance permit under this chapter, the
370 governing authority of a county or municipal corporation or local law enforcement agency
371 shall ~~inspect~~ conduct inspections as necessary to determine whether the applicant has
372 complied with the provisions of this chapter requiring cessation or limitation of activity and
373 with the terms of the disturbance permit as issued by ~~the~~ such governing authority or as
374 modified by the superior court or reviewing court.

375 36-72-14.

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

383 (b)(1) When activities of an agency, authority, or political subdivision of the state
384 adversely affect ~~an abandoned~~ a cemetery or a burial ground, such agency, authority, or
385 political subdivision shall bear the cost of mitigating the harm to the ~~abandoned~~ cemetery
386 or burial ground or reintering the human remains as a part of the cost of the project and
387 is authorized to expend public funds for such purpose.

388 (2) When activities of a private person, corporation, or other private entity adversely
389 affect ~~an abandoned~~ a cemetery or a burial ground, such person, corporation, or other
390 entity shall bear the cost of mitigating the harm to the cemetery or burial ground or
391 reintering the human remains.

392 (3) The cost of mitigating the harm to ~~an abandoned~~ a cemetery or to a burial ground or
393 reintering the human remains exposed through vandalism by an unidentified vandal or

394 through erosion may be borne by the governing authority in whose jurisdiction the
395 ~~abandoned~~ cemetery or burial ground is located.

396 (c) The provisions of this chapter notwithstanding, the Department of Transportation shall
397 not be required to obtain a disturbance permit under this chapter unless human remains are
398 to be relocated; provided, however, that the department shall be required to obtain an
399 archaeologist's report, pursuant to paragraph ~~(2)~~(3) of Code Section 36-72-5, confirming
400 the absence of human remains on the affected property.

401 36-72-15.

402 Any disinterment and disposition of human remains or burial objects permitted under this
403 chapter shall be supervised, monitored, or carried out by the applicant's archeologist and
404 a licensed funeral director and shall be done at the expense of the person or entity to whom
405 the disturbance permit is issued.

406 36-72-15.1.

407 The issuance of a disturbance permit under this chapter shall not satisfy or otherwise waive
408 the requirement to obtain any other permit required by law including, without limitation,
409 the requirement to obtain a permit for disinterment and reinterment under subsection (f) of
410 Code Section 31-10-20; provided, however, that any person who is issued a disturbance
411 permit under this chapter that authorizes the disinterment and reinterment of human
412 remains shall not seek a permit for disinterment and reinterment under subsection (f) of
413 Code Section 31-10-20 until after the expiration of the time for appeal as set forth in Code
414 Section 36-72-11 or, if an appeal is filed, until after the final resolution of such appeal
415 unless the governing authority that issued such permit and the party or parties that filed
416 such appeal consent to such disinterment and reinterment or the reviewing court issues an
417 order authorizing such disinterment and reinterment for good cause shown.

418 36-72-16.

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

426 (b)(1) In addition to bringing any other action and pursuing any other remedy that may
 427 be available at law or in equity, a descendant of any deceased human being whose
 428 remains are located in a burial ground or cemetery that is disturbed by any activities of
 429 the owner or occupier of the land where such cemetery or burial ground is located for
 430 which no disturbance permit under this chapter has been issued and that are not otherwise
 431 authorized by law may bring an action in any court of competent jurisdiction against the
 432 owner or occupier of such land to:

433 (A) Enjoin such activities;

434 (B) Recover, as damages, the cost to mitigate any harm to such human remains, the
 435 burial ground or cemetery where such human remains are located, or any burial object
 436 in connection with such human remains that is caused by such activities; and

437 (C) Recover any costs and reasonable attorney's fees incurred in bringing such action."

438 **SECTION 1-5.**

439 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in Code
 440 Section 44-12-283, relating to the powers and duties of the Council on American Indian
 441 Concerns, by revising paragraph (1) as follows:

442 "(1) To serve as a resource for the notification of relatives under paragraph ~~(4)~~(5) of
 443 Code Section 36-72-5, relating to notification of relatives ~~pursuant to obtaining in~~

444 connection with an application for a disturbance permit for land use change or
 445 disturbance under Chapter 72 of Title 36; provided, however, that failure of the council
 446 to respond within 30 days to a request to serve as a resource for the notification shall not
 447 prevent the notification process or any permit process from taking place;"

448 **PART II**

449 **SECTION 2-1.**

450 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 451 by adding a new chapter to read as follows:

452 "CHAPTER 72A

453 36-72A-1.

454 As used in this chapter, the term:

455 (1) 'Burial right' means the right to use a grave space, mausoleum, or columbarium for
 456 the interment, entombment, or inurnment of human remains.

457 (2) 'Cemetery' means a place dedicated to and used, or intended to be used, for the
 458 interment, entombment, or inurnment of human remains.

459 (3) 'Columbarium' shall have the same meaning as provided in Code Section 10-14-3.

460 (4) 'Descendant' means an individual related to a deceased human being by blood or
 461 adoption.

462 (5) 'Entombment' shall have the same meaning as provided in Code Section 10-14-3.

463 (6) 'Family burial plot' means a private, noncommercial cemetery. Such term shall not
 464 include governmentally owned cemeteries, fraternal cemeteries, cemeteries owned and
 465 operated by churches, synagogues, or other religious organizations, cemeteries wherein
 466 burial rights are sold or offered for sale, or cemeteries that are owned by registered
 467 cemetery owners pursuant to Chapter 14 of Title 10.

468 (7) 'Final disposition' or 'disposition' means the disposal of human remains by interment,
469 entombment, inurnment, or any other lawful means.

470 (8) 'Grave space' means a space of ground in a cemetery intended to be used for the
471 interment of human remains.

472 (9) 'Human remains' shall have the same meaning as provided in Code Section 10-14-3.

473 (10) 'Interment' shall have the same meaning as provided in Code Section 10-14-3.

474 (11) 'Inurnment' shall have the same meaning as provided in Code Section 10-14-3.

475 (12) 'Mausoleum' shall have the same meaning as provided in Code Section 10-14-3.

476 (13) 'Outer burial container' shall have the same meaning as provided in Code
477 Section 10-14-3.

478 (14) 'Registered land surveyor' shall have the same meaning as provided in Code
479 Section 43-15-2.

480 36-72A-2.

481 (a) No person shall establish a family burial plot on or after July 1, 2024, without having
482 first obtained a permit authorizing the establishment of such family burial plot from the
483 governing authority of the county or municipal corporation wherein the family burial plot
484 is to be established, which shall have authority to issue such permit in accordance with the
485 provisions of this chapter.

486 (b) No permit shall be issued under this chapter unless the family burial plot to be
487 established meets the minimum requirements provided for in Code Section 36-72A-3.

488 36-72A-3.

489 Each family burial plot created on or after July 1, 2024, shall:

490 (1) Be located on a tract of land that is:

491 (A) At least one acre in size;

492 (B) Subject to an easement granting perpetual access to the family burial plot that is
493 in favor of the county or municipal corporation wherein such land is located and the
494 immediate family and descendants of those interred, entombed, or inured in such family
495 burial plot; and

496 (C) Subject to a covenant that imposes on the owner, and all subsequent owners, of
497 such land the perpetual obligation to preserve, protect, and maintain such family burial
498 plot;

499 (2) Not be located in a flood plain or within 100 feet of a water well;

500 (3) Have all human remains that are located or are to be located in such family burial
501 plot;

502 (A) Interred in an outer burial container that is buried at least five feet below ground;

503 (B) Entombed in a mausoleum; or

504 (C) Inurned in a columbarium;

505 (4) Be surveyed by a registered land surveyor to show the boundaries of such family
506 burial plot; and

507 (5) Not be used for the purpose of selling burial rights.

508 36-72A-4.

509 (a) The governing authority of a county or municipal corporation may prescribe the form
510 and manner of an application for a permit under this chapter. Such application shall
511 include, at a minimum, the following information:

512 (1) Evidence of ownership of the land on which the family burial plot is to be established
513 or evidence that the owner or owners of such land consent to the establishment of the
514 family burial plot; and

515 (2) Evidence that the family burial plot meets the minimum requirements provided for
516 in Code Section 36-72A-3.

517 (b) If the governing authority of a county or municipal corporation does not prescribe the
518 form and manner of an application for a permit under this chapter, a person may apply for
519 such a permit by submitting the information required under subsection (a) of this Code
520 section in writing to such governing authority.

521 36-72A-5.

522 In connection with an application for a permit under this chapter, the governing authority
523 of a county or municipal corporation shall be authorized to impose an application fee which
524 shall reflect the cost to such governing authority for processing and reviewing the
525 application.

526 36-72A-6.

527 (a) Upon satisfactory proof that a proposed family burial plot that is the subject of an
528 application for a permit under this chapter meets the minimum requirements provided for
529 in Code Section 36-72A-3, as well as any additional requirements imposed by the county
530 or the municipal corporation wherein such family burial plot is to be established, and upon
531 the payment of any application fees imposed pursuant to Code Section 36-72A-5, the
532 governing authority of such county or municipal corporation shall issue to the applicant a
533 permit under this chapter authorizing the establishment of such family burial plot.

534 (b) Upon the denial of an application for a permit under this chapter by the governing
535 authority of a county or municipal corporation, the applicant may, within 30 days after such
536 denial, file an appeal in the superior court of the county wherein the proposed family burial
537 plot is to be established.

538 36-72A-7.

539 Nothing in this chapter is intended to prohibit, restrict, or limit the ability of the governing
540 authority of a county or municipal corporation to impose regulations and requirements

541 concerning the establishment of family burial plots that do not conflict with the provisions
542 of this chapter. Any regulation or requirement imposed by the governing authority of a
543 county or municipal corporation that conflicts with the provisions of this chapter shall be
544 void and unenforceable.

545 36-72A-8.

546 (a) Any person who violates subsection (a) of Code Section 36-72A-2 shall be subject to
547 a civil penalty not to exceed \$5,000.00 for each violation. The governing authority of a
548 county or municipal corporation shall be authorized to bring an action in the superior court
549 of the county where such violation occurred to recover the civil penalties authorized by this
550 subsection.

551 (b) In an action brought pursuant to subsection (a) of this Code section, the governing
552 authority of a county or municipal corporation may seek an order from the court requiring
553 the violator to bring the family burial plot into compliance with the minimum requirements
554 provided for in Code Section 36-72A-3 and with any additional requirements imposed by
555 the county or municipal corporation. If the family burial plot cannot be brought into
556 compliance with such requirements, the court may order that any human remains located
557 in the family burial plot be disinterred and reinterred, or otherwise disposed of, in a suitable
558 location that complies with the requirements as provided by law.

559 (c) Any remedial action or disinterment and disposition of human remains ordered by a
560 court pursuant to subsection (b) of this Code section shall be performed at the expense of
561 the person or persons found to have violated subsection (a) of Code Section 36-72A-3."

562

PART III

563

SECTION 3-1.

564 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended in
565 Chapter 10, relating to historic preservation, by adding a new article to read as follows:

566

"ARTICLE 4567 44-10-50.568 As used in this article, the term:569 (1) 'Descendant' means an individual related to a deceased human being by blood or
570 adoption.571 (2) 'Entombment' shall have the same meaning as provided in Code Section 10-14-3.572 (3) 'Grave site' means the place where human remains have been interred, entombed, or
573 inurned.574 (4) 'Human remains' or 'remains' means the bodies of deceased human beings and
575 includes bodies in any stage of decomposition and cremated remains.576 (6) 'Interment' shall have the same meaning as provided in Code Section 10-14-3.577 (6) 'Inurnment' shall have the same meaning as provided in Code Section 10-14-3.578 44-10-51.579 (a) A descendant of a deceased human being whose remains have been interred, entombed,
580 or inurned on the land of another may, when denied entry upon such land, bring an action
581 against the owner of such land in the superior court of the county where such land is
582 located for an order allowing the descendant to enter upon such land for the purpose of
583 visiting, caring for, or maintaining the grave site where such human remains are located.584 (b) When granting an order described in subsection (a) of this Code section, the superior
585 court may:586 (1) Specify the dates and the hours that the descendant may enter and remain upon such
587 land;588 (2) Grant the descendant the right to enter upon such land periodically, as specified in
589 the order; and

590 (3) Impose any limitations on the descendant's ability to enter upon such land to prevent
591 unreasonable interference with the use and enjoyment of such land by the owner thereof.

592 44-10-52.

593 (a) When an individual has reasonable grounds to believe that he or she is a descendant
594 of a deceased human being whose remains may have been interred, entombed, or inurned
595 on the land of another, such individual may, when denied entry upon such land for the
596 purpose of discovering whether such human remains are located therein, bring an action
597 against the owner of such land in the superior court of the county where such land is
598 located for an order allowing the individual to enter upon such land for the purpose of
599 discovering whether he or she is a descendant of a deceased human being whose remains
600 may be located on such land.

601 (b) When granting an order described in subsection (a) of this Code section, the superior
602 court may:

603 (1) Authorize entry upon the land for the purpose of discovering the existence of human
604 remains therein and conducting genealogical research with respect to any such human
605 remains;

606 (2) Specify the dates and the hours that entry upon the land may occur; and

607 (3) Impose any limitations on the ability to enter upon such land to prevent unreasonable
608 interference with the use and enjoyment of such land by the owner thereof.

609 44-10-53.

610 Any remedy granted pursuant to the provisions of this article shall be in addition to and
611 cumulative of all other remedies provided by law, and any action brought pursuant to the
612 provisions of this article shall not preclude the ability of any individual to bring any other
613 action or seek any other remedy that may be available at law or in equity."

614

PART IV

615

SECTION 4-1.

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