

HOUSE BILL 390

By Powers

AN ACT to amend Tennessee Code Annotated, Title 4;  
Title 29; Title 39 and Title 46, relative to  
cemeteries.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 46, is amended by adding the following  
new chapter thereto:

46-9-101

As used in this chapter:

(1) "Abandoned cemetery" means a cemetery that 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, 2013, 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 term includes privately owned burial plots, individually and collectively, once human remains have been buried on such. The fact that the area has a prior use for burial purposes shall be evidence that the area 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. "Burial object" 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 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 either a burial park and mausoleum;

(6) "Descendant" means a person or group of persons related to a deceased human by blood or adoption;

(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 but not limited to, cremated remains; and

(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 may also include the cleaning, maintenance, and upkeep of the site so as to aid in the site's preservation and protection.

46-9-102

Counties, anywhere within the county boundaries, and municipalities, anywhere within the municipal boundaries, are authorized, jointly and severally, to preserve and protect any abandoned cemetery or any burial ground that the county or municipality determines has been abandoned or is not being maintained by the person who is legally

responsible for its upkeep. The county or municipality preserving and protecting any abandoned cemetery or burial ground is authorized, but only with the consent of the county legislative body or other governing body, to expend public money for such purposes, to provide for reimbursement of such funds by billing any legally responsible person or levying upon any of such person's property as authorized by local ordinance, and to exercise the power of eminent domain to acquire any interest in land necessary for that purpose. The powers set out in this section shall be in addition to the powers set out in § 46-4-103.

#### 46-9-103

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 county or municipality where the cemetery or burial ground is located.

#### 46-9-104

Application for a permit provided in § 46-9-103 shall include, at a minimum, the following information:

- (1) Evidence of ownership of the land on which the cemetery or burial ground is located;
- (2) A report prepared by an archeologist stating the number of graves believed to be present and the locations of such graves as can be determined from the use of minimally invasive investigation techniques, including but not limited to, 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 of the remains, the approximate cost of the process, and the approximate number of graves affected.

#### 46-9-105

An applicant for a permit filed pursuant to § 46-9-104 shall implement the applicant's plan for identifying and locating descendants no later than the date the application is submitted to the county or municipality. The county or municipality 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 county or municipality and a summary of the rights of descendants under this chapter. The county or municipality 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, and the time and place of any scheduled public hearings.

#### 46-9-106

(a) Within fifteen (15) days after the county or municipality is satisfied that all reasonable effort has been made to notify descendants, as provided in § 46-9-105, and following receipt of the recommendations of a board or commission created pursuant to § 46-9-108, the county or municipality 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 § 46-9-105, notice of the public hearing shall be advertised in a newspaper of general circulation, as defined in § 2-1-104, once a week for the two (2) consecutive weeks immediately preceding the week in which any such hearing is held.

(b) Within thirty (30) days after the conclusion of the public hearing, the governing authority shall notify the applicant for a permit filed pursuant to § 46-9-104 in writing of its decision. The county or municipality shall have the authority to deny the application with written reasons of such denial, to issue a permit adopting the application in whole or in part, or to issue a permit that 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 the human remains.

46-9-107

The county or municipality shall consider the following in making its determination to grant or deny a permit filed pursuant to § 46-9-104:

(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 that the county or municipality deems relevant.

#### 46-9-108

The county or municipality shall be authorized to establish or empower a new or existing commission or board to hear and review any application filed pursuant to § 46-9-104. A board or commission created pursuant to this section shall conduct a public hearing within sixty (60) days of the filing of an application pursuant to § 46-9-104 and shall make a written recommendation to the county or municipality no later than fifteen (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.

#### 46-9-109

The county or municipality shall be authorized to impose an application fee that shall reflect the cost to the county or municipality for processing and reviewing an application filed pursuant to § 46-9-104, 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. Any such fee imposed pursuant to this section shall not exceed two thousand five hundred dollars (\$2,500).

#### 46-9-110

If any applicant or descendant is dissatisfied with a decision of the county or municipality regarding an application for a permit pursuant to § 46-9-104, the applicant or descendant may file, within thirty (30) days of such decision, an appeal in the chancery court of the county in which the cemetery or burial ground is located.

46-9-111

Until the expiration of the time for appeal as set forth in § 46-9-110, the applicant shall not begin or resume activities that comply with a permit issued by the county or municipality. If an appeal is filed pursuant to § 46-9-110, the applicant may begin or resume activities that comply with a permit only upon order of the reviewing court.

46-9-112

(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 pursuant to § 46-9-104, the chancery court having jurisdiction over the real property where the cemetery or burial ground is located shall have exclusive jurisdiction over the permit application. The chancery court shall conduct its investigation and determination of the permit in accordance with this chapter.

(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 cemetery or burial ground or reintering the human remains as a part of the cost of the project. 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 county or municipality in whose jurisdiction the abandoned cemetery or burial ground is located.

46-9-114

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.

46-9-115

(a) Any person who knowingly fails to comply with this chapter is guilty of a Class A misdemeanor and shall pay a fine of not more than five thousand dollars (\$5,000) for each grave site disturbed; provided, however, that any person who knowingly violates § 46-9-103 is guilty of a Class A misdemeanor and, upon conviction, shall be incarcerated for not more than six (6) months and shall pay a fine of not more than five thousand dollars (\$5,000) for each grave site disturbed.

(b) If a violation of subsection (a) also constitutes a violation of § 39-17-311, the defendant may be charged and convicted under any or all such sections.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it, and shall apply to offenses committed on or after the effective date of this act.