

The Senate Committee on Regulated Industries and Utilities offered the following substitute to SB 146:

A BILL TO BE ENTITLED  
AN ACT

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

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 set forth 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~~ Such term shall include privately owned burial plots, individually and collectively,
- 141 once human remains have been buried therein. The fact that such ~~the~~ area was used for
- 142 burial 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) 'Entombment' shall have the same meaning as set forth in Code Section 10-14-3.

156 ~~(7)~~(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) '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 set forth in Code Section 10-14-3.

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

433 (1) Enjoin such activities;

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

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

438 36-72-17.

439 Except as otherwise provided in Code Section 36-72-14, nothing in this chapter shall  
440 preclude a person from seeking authorization directly from a probate court of competent  
441 jurisdiction to disinter human remains or otherwise disturb a burial ground, human remains,  
442 or a burial object."

443

**SECTION 1-5.**

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

447 "(1) To serve as a resource for the notification of relatives under paragraph ~~(4)~~(5) of  
 448 Code Section 36-72-5, relating to notification of relatives pursuant to obtaining in  
 449 connection with an application for a disturbance permit for land use change or  
 450 disturbance under Chapter 72 of Title 36; provided, however, that failure of the council  
 451 to respond within 30 days to a request to serve as a resource for the notification shall not  
 452 prevent the notification process or any permit process from taking place;"

453

**PART II**

454

**SECTION 2-1.**

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

457

"CHAPTER 72A458 36-72A-1.459 As used in this chapter, the term:

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

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

464 (3) 'Columbarium' shall have the same meaning as set forth in Code Section 10-14-3.

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

- 467 (5) 'Entombment' shall have the same meaning as set forth in Code Section 10-14-3.
- 468 (6) 'Family burial plot' means a private, noncommercial cemetery. Such term shall not  
469 include governmentally owned cemeteries, fraternal cemeteries, cemeteries owned and  
470 operated by churches, synagogues, or other religious organizations, cemeteries wherein  
471 burial rights are sold or offered for sale, or cemeteries that are owned by registered  
472 cemetery owners pursuant to Chapter 14 of Title 10.
- 473 (7) 'Final disposition' or 'disposition' means the disposal of human remains by interment,  
474 entombment, inurnment, or any other lawful means.
- 475 (8) 'Grave space' means a space of ground in a cemetery intended to be used for the  
476 interment of human remains.
- 477 (9) 'Human remains' shall have the same meaning as set forth in Code Section 10-14-3.
- 478 (10) 'Interment' shall have the same meaning as set forth in Code Section 10-14-3.
- 479 (11) 'Inurnment' shall have the same meaning as set forth in Code Section 10-14-3.
- 480 (12) 'Mausoleum' shall have the same meaning as set forth in Code Section 10-14-3.
- 481 (13) 'Outer burial container' shall have the same meaning as set forth in Code  
482 Section 10-14-3.
- 483 (14) 'Registered land surveyor' shall have the same meaning as set forth in Code  
484 Section 43-15-2.
- 485 36-72A-2.
- 486 (a) No person shall establish a family burial plot on or after July 1, 2026, without having  
487 first obtained a permit authorizing the establishment of such family burial plot from the  
488 governing authority of the county or municipal corporation wherein the family burial plot  
489 is to be established, which shall have authority to issue such permit in accordance with the  
490 provisions of this chapter.
- 491 (b) No permit shall be issued under this chapter unless the family burial plot to be  
492 established meets the minimum requirements provided for in Code Section 36-72A-3.

493 36-72A-3.

494 Each family burial plot created on or after July 1, 2026, shall:

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

496 (A) At least one-half acre in size;

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

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

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

505 (3) Have all human remains that are located or are to be located in such family burial  
506 plot:

507 (A) Interred in a grave space;

508 (B) Entombed in a mausoleum; or

509 (C) Inurned in a columbarium;

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

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

513 36-72A-4.

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

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

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

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

526 36-72A-5.

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

531 36-72A-6.

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

539 (b) Upon the denial of an application for a permit under this chapter by the governing  
540 authority of a county or municipal corporation, the applicant may, within 30 days after such

541 denial, file an appeal in the superior court of the county wherein the proposed family burial  
542 plot is to be established.

543 36-72A-7.

544 Nothing in this chapter is intended to prohibit, restrict, or limit the ability of the governing  
545 authority of a county or municipal corporation to impose regulations and requirements  
546 concerning the establishment of family burial plots that do not conflict with the provisions  
547 of this chapter. Any regulation or requirement imposed by the governing authority of a  
548 county or municipal corporation that conflicts with the provisions of this chapter shall be  
549 void and unenforceable.

550 36-72A-8.

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

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

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

567 **PART III**

568 **SECTION 3-1.**

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

571 "ARTICLE 4

572 44-10-50.

573 As used in this article, the term:

574 (1) 'Descendant' means an individual related to a deceased human being by blood or  
575 adoption.

576 (2) 'Entombment' shall have the same meaning as set forth in Code Section 10-14-3.

577 (3) 'Grave site' means the place where human remains have been interred, entombed, or  
578 inurned.

579 (4) 'Human remains' or 'remains' means the bodies of deceased human beings and  
580 includes bodies in any stage of decomposition and cremated remains.

581 (5) 'Interment' shall have the same meaning as set forth in Code Section 10-14-3.

582 (6) 'Inurnment' shall have the same meaning as set forth in Code Section 10-14-3.

583 44-10-51.

584 (a) A descendant of a deceased human being whose remains have been interred, entombed,  
585 or inurned on the land of another may, when denied entry upon such land, bring an action  
586 against the owner of such land in the superior court of the county where such land is

587 located for an order allowing the descendant to enter upon such land for the purpose of  
588 visiting, caring for, or maintaining the grave site where such human remains are located.

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

591 (1) Specify the dates and the hours that the descendant may enter and remain upon such  
592 land;

593 (2) Grant the descendant the right to enter upon such land periodically, as specified in  
594 the order; and

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

597 44-10-52.

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

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

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

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

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

614 44-10-53.

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

619

#### **PART IV**

620

#### **SECTION 4-1.**

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