

ALABAMA CEMETERY PRESERVATION ALLIANCE

Note: This paper is for reference purposes only and does not constitute legal advice.

ALABAMA CEMETERY LEGISLATION/LAWS

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ALABAMA CEMETERY LEGISLATION/LAWS

The Code of Alabama 1975 has several sections of particular interest to those who wish to restore, preserve and maintain a cemetery – particularly the small, oft-times neglected rural family cemetery. The entire Code of Alabama 1975 can be viewed and searched at the Official Website of the Alabama Legislature at: <http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/coatoc.htm>. The individual sections cited below can be reached from this website by selecting the desired Title in the left margin menu on the web site and then selecting from the resulting links that appear in the main part of the page. A search-by-word-or-phrase feature can be found at <http://alisondb.legislature.state.al.us/alison/CoaSearchContent.aspx>.

Title 9 - CONSERVATION AND NATURAL RESOURCES

Chapter 16 MINERAL RESOURCES

Section 9-16-96 Designation of areas unsuitable for surface coal mining; right to petition; review and public hearing; areas exempt from mining operations.

- (a)(3) Upon petition pursuant to subsection (c) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:
- b. Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems; or
- (e) After the enactment of this article and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this article shall be permitted:
- 3) Which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the regulatory authority and the federal, state, or local agency with jurisdiction over the park or the historic site;

Title 10 - CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS

Chapter 4 PARTICULAR CORPORATIONS, ASSOCIATIONS, ETC

Article 2 Churches, Public Societies and Graveyard Owners

Section 10-4-20 Incorporation.

- (a) The members of any church, conference of churches, religious society, educational society, benevolent, monument or burial society, patriotic society, societies for the purpose of nature study or scientific research, society for establishing public parks or places of public recreation, societies for promoting knowledge, promoting arts or promoting sciences, societies for purposes of like kind or the owners of a graveyard, or the trustees of any of the foregoing churches, conferences, institutions, or societies elected by the organization, or organizations, of the church, conferences, institution, association, or society desiring to become incorporated, shall adopt a resolution signifying the intention and elect not less than three trustees.
- (b) The trustees shall, within 30 days after their election, file in the office of the judge of probate of the county in which the corporation is to exercise its functions, or part of its functions, a certificate stating the corporate name selected, the names of the trustees and the length of time for which they are elected, which certificate shall be subscribed by them and recorded. The members of the society, their associates and successors are, from the filing of the certificate, incorporated by the name specified.

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Section 10-4-27 Burial societies — Special powers.

Burial societies so incorporated may exercise all powers necessary for properly governing, beautifying, improving and taking care of such graveyard, and may make such bylaws, rules and regulations as are proper and necessary to secure such objects.

[Ed: The sections of the Code of Alabama 1975 below address cemeteries as property, the protection the Criminal Code provides cemeteries, the acquisition of rights-of-way to cemeteries and the laws governing nonprofit corporations and associations designed to restore, preserve and maintain cemeteries.]

Title 11 - Counties & Municipal Corporations

Title 1 - Provisions Applicable to Counties Only

Chapter 7 SURVEYORS

Section 11-7-5 Right of entry upon lands for execution of court ordered survey; penalty for obstruction of surveyor, etc.

In the execution of an order of survey directed to him by any court, the surveyor and his assistants may, without the consent of the occupant or claimant of ownership, enter upon any lands necessary to be surveyed or entered upon and survey the same in an orderly and proper manner, and any person who shall obstruct him or his assistants therein shall be punished as for contempt of court.

Chapter 17 BURIAL PLACES, GRAVEYARDS AND CEMETERIES

[Ed: Chapter 17 has a total 16 Sections. The following are the more relevant Sections for our purposes. Please check the Official Website of the Alabama Legislature for other sections that may apply to your particular situation.]

Section 11-17-1 Petition for appointment of commission to locate or enlarge, mark boundaries, etc., of burial places, graveyards or cemeteries.

Five or more citizens may petition the judge of probate of any county in which any burial place, graveyard or cemetery is located, requesting him to appoint a commission to locate, mark the boundaries, plat and survey such burial place or to enlarge the area of any burial place, mark the boundaries thereof, plat and survey the part enlarged.

Section 11-17-2 Commission - Appointment; notice of appointment and issuance of commission to members.

Upon the filing of such petition, the judge shall appoint a commission, not to exceed five nor less than three, to locate the boundaries, survey, map and plat such burial place and shall forthwith notify each member of such commission of his appointment and issue to him a commission directing him to perform the duties required of him under this chapter.

Section 11-17-3 Commission - Establishment and marking of boundaries; preparation and filing of reports.

Within 60 days after their appointment, the commission shall meet at the proposed burial place, fix the boundaries and mark with posts, brick, stone or other durable material the graveyard to be established or enlarged and shall make their report in writing and file the same in the office of the judge of probate.

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Section 11-17-4 Commission - Assessment and report of damages from taking of property, etc.

The commission shall also assess the damages suffered by any person by reason of the taking of his property or injury thereto in locating and marking boundaries for burying places, which shall be included in their reports to the probate judge and shall state the names of the owners of land so taken or injured.

Section 11-17-5 Recordation of proceedings upon costs. payment of damages and

Upon the payment to the probate judge by the petitioners of the amount of damages assessed, together with the costs of the proceedings, the judge shall cause such proceedings to be recorded in the probate office in said county.

Section 11-17-6 Dedication to public and use of burial place.

After such proceedings are recorded, the burial place so located, bounded or enlarged as shown by such proceedings shall be thereafter dedicated to the public and may be used for a burying place.

Section 11-17-7 Appeals from assessment of damages - Authorized.

Any party interested in such proceeding to locate and fix boundaries of burial places, as provided for in this chapter, may appeal to the probate court within 30 days from the filing of such report for the purpose only of fixing the amount of damages to the property taken or injured.

Section 11-17-8 Appeals from assessment of damages — Bond.

Any person desiring to appeal as provided for in this chapter shall execute a bond in an amount to be fixed by the probate judge and payable to him for the use of any person injured, conditioned to prosecute such appeal to effect and to pay or perform such judgment as may be entered against him in the probate court, which bond must be approved by the probate judge.

Section 11-17-9 Appeals from assessment of damages — Establishment of date for hearing; summoning and empaneling of jurors; notice of hearing.

On the approval of such appeal bond by the probate judge, he shall set a day for hearing the same, not less than 10 nor more than 30 days from that date, and must summon and empanel jurors as provided for in contests of wills in such court and shall give notice to the adverse parties of such hearing.

Section 11-17-10 Appeals from assessment of damages — Conduct of hearing generally; establishment of damages by jury.

On the hearing of such trial, the court shall cause an issue to be made between the parties interested to ascertain the amount of damages for the property taken or injured in locating the burial place. Either party may examine witnesses on such trial and may argue the questions to the court or jury by themselves or counsel, which questions must then be submitted to the jury for their determination, which amount of damages shall be fixed by the verdict of the jury.

Section 11-17-11 Appeals from assessment of damages — Entry of judgment for damages and costs.

The court shall enter an appropriate order of judgment of the court based upon the verdict of the jury fixing the amount of damages and awarding the costs against the parties as may seem proper to the court.

ALABAMA CEMETERY PRESERVATION ACT

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Section 11-17-12 Property not deemed dedicated until damages and costs paid.

The property set apart for burial places as provided in this chapter shall not be deemed as dedicated as provided in this chapter until all damages and costs awarded shall have been paid into the probate court by the parties interested in the proceedings.

Section 11-17-13 Preservation, repair, etc., of public or private burial places, etc., declared charitable purposes; conveyances, devises, etc., of burial places for such purposes deemed to create charitable trusts.

The preservation, repair and maintenance of public or private burial places or burial lots and the preservation, repair, maintenance, embellishment, improvement and replacement of monuments and other things thereon and the ways and easements appurtenant thereto are hereby declared and made proper matters of charity, and every conveyance, transfer, devise and bequest of any such burial place or burial lot or any money or property in trust for such purposes or any of them shall be held to create a charitable trust.

Section 11-17-14 Burial societies, cemeteries, etc., empowered to accept conveyances, devises etc. and to act as trustees.

Every burial society or burial association organized under the laws of this state and every corporation having power to act as trustee or engage in the business of owning, controlling and maintaining private or public cemeteries are hereby empowered to accept any such conveyance, transfer, devise or bequest and to act as trustee for any such trust.

Section 11-17-15 Trusts created by conveyances, devises, etc., may be perpetual; terms and conditions of same.

Any trust created by any such conveyance, transfer, devise or bequest may be perpetual or for any other length of time and may be made subject to any lawful terms and conditions which shall not be inconsistent with the uses for which such burial place or burial lot, money or property may be so conveyed, transferred, devised or bequeathed.

Section 11-17-16 Validation, etc., of prior conveyances, bequests, etc.

All conveyances, transfers, devises and bequests for any purpose set out in section 11-17-13 made prior to July 2, 1931, are hereby validated, ratified and confirmed.

Title 11 - Counties & Municipal Corporations

Title 2 PROVISIONS APPLICABLE TO MUNICIPAL CORPORATIONS ONLY

Chapter 44 COMMISSION FORM OF GOVERNMENT

Section 11-44-135 Distribution of municipal powers and duties among departments; authority of commissioners as heads of departments; additional duties of president of board.

The commissioners shall be municipal officers only and shall have, possess and exercise the municipal powers, legislative, executive and judicial, now or hereafter conferred upon municipalities and governing bodies thereof. The powers and duties of the municipality shall be distributed into and among three departments, as follows:

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(1) The department of general administration shall be especially charged with the administration of all legal affairs of the municipality, the purchase of supplies, the collection of taxes, licenses and other sources of income, the expenditures of the municipality, the management of its sinking fund, the management of public utilities either owned and operated by the municipality or operated by private corporations under franchises or contracts with the municipality and supervision and control of all public libraries. The president of the board shall be the head of the department of general administration.

(2) The department of public improvements shall have special supervision over all public improvements in the municipality including the improvement and maintenance of streets and sidewalks, the building of viaducts, the construction, maintenance and operation of sewers, the erection and maintenance of all public buildings, parks, playgrounds and cemeteries and the collection and disposal of garbage and refuse. The associate commissioner number one shall be the head of the department of public improvements and shall be charged with, and responsible for, the operation of such department.

(3) The department of public safety shall have supervision over the fire and police departments and of all things connected therewith and over the public health and sanitation and, except as provided otherwise in this section, all things pertaining thereto. The associate commissioner number two shall be the head of the department of public safety and shall be charged with, and responsible for, the general administration of such department.

Each commissioner acting as the head of the department to which he is elected shall be limited in his authority as head of such department to the execution and enforcement of the laws and ordinances of the municipality pertaining to his department and to the administration thereof, except that all commissioners while sitting as members of the board as a legislative body at any regular meeting of the board or any adjournment thereof shall exercise the legislative powers of the board. In addition to the duties hereinbefore provided for, the president of the board shall perform all duties not inconsistent with the provisions of this article which are imposed by law on mayors in cities or towns having the aldermanic form of government.

Title 11 - Chapter 47 POWERS, DUTIES AND LIABILITIES GENERALLY

Article 1 General Provisions

Section 11-47-22 Exercise of police jurisdiction over hospitals, poorhouses, cemeteries, etc.

All cities and towns of this state shall have the power to exercise police jurisdiction over all lands purchased or acquired by the city or town for the purpose of being used or occupied as a hospital, quarantine station, poorhouse, pesthouse, workhouse or house of correction, schoolhouse, sanitary or storm water sewers, rights-of-way, cemeteries and parks, and the laws and ordinances of the cities and towns shall apply to and extend over all the lands so used or occupied and the inhabitants thereof.

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**Title 11 - Chapter 47 POWERS, DUTIES AND LIABILITIES
GENERALLY (Cont)**

Article 2 Cemeteries and Burial Grounds.

Division 1 General Provisions

Section 11-47-40 Ownership, regulation, etc., of municipal cemeteries; regulation, etc., of establishment or use of private cemeteries within police jurisdiction.

All cities and towns of this state shall have the power to own, regulate, improve, lay out and control town or city cemeteries and permit additions thereto and the establishment of new ones, either within or without the town or city limits, and to sell burial lots in the same, and to regulate or prohibit the establishment or use of private cemeteries within the police jurisdiction of a city or town elsewhere than in the city or town cemeteries.

Section 11-47-41 Contracts for municipal care and maintenance of burial grounds, cemeteries and graves — Authorized.

Any incorporated city or town having within its corporate limits an ancient family cemetery or burial ground or owning a cemetery or burial ground may make and enter into a contract with any interested party or parties obligating and binding the city or town to forever protect, maintain and properly care for such cemetery or burial ground or for graves of individuals in the cemeteries or burial grounds owned by such city or town, upon terms and conditions as may be agreed upon and for such compensation as it may see fit to accept.

Section 11-47-42 Contracts for municipal care and maintenance of burial grounds, cemeteries and graves — Manner of contracting.

All contracts made under the provisions of Section 11-47-41 shall be by ordinance, which shall state all the terms and conditions of the contract, and the same shall be passed and approved as other ordinances of such city or town and recorded upon the minutes thereof.

Division 2 Abandonment of Cemeteries and Removal and Reinterment of Human Remains

Section 11-47-60 Declaration for abandonment of cemetery and removal of human remains interred therein — Adoption, etc.

(a) Any cemetery corporation or association, including religious bodies, owning or controlling any cemetery within this state may, with the consent and approval of the governing body of the city or town in which such cemetery is located or with the consent and approval of the governing body of the county if such cemetery is located outside the limits of an incorporated municipality, by resolution of its board of directors or other governing body, when assented to in writing filed with the secretary by at least three fourths of the lot owners and holders of such corporation or association or ratified and approved by like vote thereof at any regular meeting of the cemetery corporation or association or at a meeting specially called for that purpose, declare for the abandonment in whole or in part of such cemetery as a burial place for the human dead and for the removal of human remains interred therein to another cemetery or cemeteries in this state or for the depositing of such remains in a memorial mausoleum or columbarium as provided in this division.

(b) Any corporation sole or other person owning or controlling any cemetery or the lands on which any grave or cemetery is located in this state may also declare for the abandonment in whole or in part of any such cemetery owned or controlled by such corporation sole or other person and for the removal of human remains interred therein to another cemetery or cemeteries in

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this state or the depositing of such remains in a memorial mausoleum or columbarium as provided in this division.

Section 11-47-61 Declaration for abandonment of cemetery and removal of human remains interred therein — Specification as to removal of remains after two months.

Any resolution or declaration for abandonment and removal duly adopted and made under the provisions of Section 11-47-60 shall specify and declare that at any time after the expiration of two months from and after the first publication of the notice of declaration of abandonment and removal required to be published under the provisions of Section 11-47-62 the human remains then remaining in such cemetery or part thereof will be removed by such cemetery corporation, association, corporation or other person owning or controlling such cemetery.

Section 11-47-62 Declaration for abandonment of cemetery and removal of human remains interred therein — Publication, posting and mailing of notice.

(a) Notice of the said declaration of abandonment and of the proposed removal of the human remains from any such cemetery or part thereof shall be given to all persons interested therein by publication in a newspaper of general circulation published in the city or town wherein said cemetery or part thereof is situated or in a newspaper of general circulation published in the county wherein the same is situated if located outside the limits of an incorporated municipality, which publication shall be made once a week for two successive months.

(b) Said notice shall be entitled "Notice of declaration of abandonment of lands for cemetery purposes and of intention to remove the human bodies interred therein," and shall specify a date, not less than two months after the first publication of such notice, when the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands and causing such notice to be published will proceed to remove the human remains then remaining in such cemetery or part thereof.

(c) Copies of said notice so published shall within 10 days after the first publication thereof be posted in at least three conspicuous places in the cemetery or part thereof from which said removals of the human remains interred therein are to be made, and a further copy of said notice shall be mailed to every person who owns or holds or had the right of burial in any lot or plat in said cemetery or part thereof affected by such resolution or declaration of abandonment and removal whose name appears as such owner or holder upon the records of such cemetery, which such notice so mailed shall be addressed to the last known post office address of said respective lot owner or lot holder as the same appears from the records of said cemetery and, if no such address appears or is known, then the same shall be addressed to such person at the city or town or post office address wherein said cemetery land is situated. Such notice shall be mailed to each known living heir at law of any person whose remains are resting in said cemetery when the address of such heir is known.

Section 11-47-63 Removal and reinterment of remains by corporations, etc., generally; notices.

(a) After the completion of the publication, posting and mailing of the "Notice of declaration of abandonment of lands for cemetery purposes and of intention to remove the human bodies interred therein," as provided for in Section 11-47-62, and after the expiration of the period of two months specified in said notice as provided in Section 11-47-61, any cemetery corporation, association, corporation sole or other person owning or controlling any such cemetery shall have power to cause the removal of all human remains interred in any such cemetery or part thereof to be abandoned as a cemetery or burial place for the dead and to cause the reinterment in other cemeteries in this state where burials are permitted or to deposit the said remains in a mausoleum or columbarium erected for that purpose without further notice to any person claiming any interest in said cemetery or part thereof or in the remains therein interred; provided, however, that at any

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time before the date fixed for the removal of such remains by the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands, any relative or friend of any person whose remains are interred in such cemetery or part thereof from which it is proposed to make such removals may give such cemetery corporation, association, corporation sole or other person proposing to make such removals written notice that he or she desires to be present when such remains of a friend or relative so giving notice are disinterred or are reinterred or deposited in such mausoleum or columbarium. Such notice shall state the name of the person whose remains are referred to, and, as accurately as possible, shall describe the lot or plat where the remains are buried and the date of burial and shall specify an address at which the notice provided for in subsection (b) of this section may be given. Such notice may be delivered at the office or principal place of business of said cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands and proposing to make such removals or may be forwarded thereto by registered or certified mail.

(b) Upon receipt of any such notice before the date fixed for the removal of said remains by the cemetery corporation, association, corporation sole or other person proposing to make such removals, it shall be the duty of said cemetery corporation, association, corporation sole or other person to give written notice to the person giving the notice provided for in subsection (a) of this section of the time when such remains shall be disinterred and of the time when and the place where the same will be reinterred or deposited. Said notice may be given by delivery thereof at the address stated in the notice referred to in subsection (a) of this section or by mailing the same to the person giving such notice at such address, such delivery or mailing to be made at least 10 days prior to the date specified for the disinterment of such remains.

(c) Whenever such written notice provided for in subsection (a) of this section shall be given by a relative or friend of any person interred in such cemetery lands from which such removals are proposed to be made, said cemetery corporation, association, corporation sole or other person owning or controlling said cemetery lands and proposing to remove the bodies interred therein shall not disinter the remains referred to in said notice until the notice of the time of such disinterment is given such relative or friend as provided in subsection (b) of this section.

Section 11-47-64 Notice to board of health of removal of remains, etc.; removal of remains, etc., subject to rules and regulations of board of health.

(a) Any cemetery corporation, association, corporation sole or other person owning or controlling such cemetery shall, before disinterring, transporting or removing human remains under the provisions of this division, make a written report to the State Board of Health setting forth the name and date of death of each person whose remains are to be removed, if known, the location of the grave and the location of the grave to which such remains are to be removed.

(b) Such disinterment, transportation or removal of human remains shall be performed subject to such reasonable rules and regulations relative to the manner of disinterring, transporting or removing such remains as may be adopted by the State Board of Health.

Section 11-47-65 Voluntary removal of remains by relative or friend of person interred or by owner of plat or lot; affidavit of person removing remains.

At any time prior to the removal by said cemetery corporation, association, corporation sole or other person owning or controlling said cemetery lands of the remains of any person buried therein, any relative or friend of said person may voluntarily remove such remains and dispose of the same as he may desire; provided, that the person desiring to cause such removal shall, prior to such removal, deliver to said cemetery corporation, association, corporation sole or other person owning or controlling such cemetery an affidavit duly sworn to before an officer qualified to administer oaths stating the name of the person whose remains it is desired to remove and further stating, so far as is known to the affiant, the date of burial of such remains and the names and places of residence of the heirs at law of such deceased person. In the event that the person desiring to cause such removal is not an heir at law of the person whose remains he desires to

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remove, such removal shall not be made by him until he shall have delivered to said cemetery corporation, association, corporation sole or other person owning or controlling such cemetery the written consent of a majority of the known heirs at law of such deceased persons who are residents of the State of Alabama. The statements in the said affidavit shall be sufficient evidence of the numbers, names and residences of such heirs at law for all of the purposes of this section, and the written consent of the majority of such heirs at law named in said affidavit shall be sufficient warrant and authority for the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery to permit the removal of the remains by such person; provided further, that the purchaser or owner of any burial lot or plat in any such cemetery or part thereof or of the right of burial therein or any one of the joint purchasers or owners of such lot or plat or burial right therein may cause the removal of any or all of the remains interred in such lot or plat without the necessity of filing any affidavit of consent as hereinabove specified, and if the right, title or interest of any grantee of any burial lot or plat in such cemetery or the right of burial therein shall be passed by succession to the heir or heirs at law of such grantee without formal distribution by order of court, such heir or heirs at law may remove the remains of persons interred in any such lot or plat, and the affidavit of any such heir at law setting out the facts of such heirship shall be accepted by the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands from which such removals are to be made as sufficient evidence for all the purposes of this section of the fact of the transfer of such title or right of burial to such heir or heirs at law as alleged in said affidavit.

Section 11-47-66 Purchase and sale of lands, etc., for reinterment of remains from abandoned cemeteries; reservation of lands in abandoned cemeteries for erection of memorial mausoleum, etc.

(a) Whenever any such cemetery corporation, association, corporation sole or other person owning or controlling any such cemetery lands from which the bodies interred therein are to be removed in accordance with the provisions of this division shall have purchased or otherwise acquired lands or a mausoleum or columbarium or the possession or use thereof for the purpose of providing a place for the reinterment or depositing of any human remains which may be removed from any such abandoned cemetery or part thereof, such new lands may be surveyed and subdivided into lots and plats and avenues and walks for cemetery purposes, and any such mausoleum or columbarium or any part thereof may be divided into niches, compartments or receptacles for the receipt of such remains as may be therein deposited. Thereafter such lots or plats, niches, compartments or receptacles may be sold to persons desiring to make reinterments or to deposit human remains therein and the board of directors or other governing body of any such cemetery corporation or association may receive and accept as part or full consideration for the purchase price of such new lots or plats, niches, compartments or receptacles and under such terms and conditions as to the value or price thereof as the said directors or other governing body may deem equitable, full or partial releases from the members of such corporation of their respective right in or to the whole or any part of the assets of said corporation or association other than the lot or plat, niche, compartment or receptacle conveyed to such purchasers respectively. Any retransfer to said cemetery corporation or association of any lot or plat in the cemetery from which the removal of the human remains are to be made shall operate as such a release.

(b) Sufficient lands may be reserved from any such cemetery lands abandoned as a burial place for the dead and from which the human remains have been removed to erect a memorial mausoleum or columbarium for the depositing of the bodies disinterred from such cemetery lands and to provide sufficient grounds around the same and to preserve such historical vaults or monuments as the board of directors or other governing body of any such cemetery corporation or association may determine to be proper or necessary.

Section 11-47-67 Reinterment of remains generally.

Whenever under the provisions of this division the remains of any person shall have been removed from any cemetery or part thereof abandoned as such burial place under the provisions of the division by the cemetery corporation, association, corporation sole or other person having charge

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or control of such cemetery lands, such remains shall be transported to and reinterred in any other cemetery in this state where burials are permitted by such cemetery corporation, association, corporation sole or other person having charge or control of such cemetery lands or part thereof or deposited in a mausoleum or columbarium as provided in this section.

The remains of each person so reinterred shall be placed in a separate and suitable receptacle and decently and respectfully interred under such rules and regulations now in force or that may be adopted by such cemetery corporation, association, corporation sole or other person making such removal. If the remains of any such person so removed from said cemetery lands are deposited in a memorial mausoleum or columbarium built for that purpose, each body so removed shall be inclosed in a separate and suitable receptacle or container and shall be so deposited in a decent and respectful manner in accordance with such rules and regulations now existing or that may hereafter be adopted by such cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands.

Section 11-47-68 Erection of markers upon and preparation, filing, etc., of maps, plans, etc., of lands, etc., where remains reinterred.

After the removal and reinterment or deposit in a mausoleum or columbarium of the bodies disinterred from any such abandoned cemetery or part thereof the cemetery corporation, association, corporation sole or other person owning or controlling such abandoned cemetery lands and making such removals shall cause to be erected upon or imbedded in any lot or plat wherein any such body is reinterred a suitable permanent marker identifying such remains and shall prepare a complete map or plat describing and showing the location and subdivision into lots and plats of the cemetery lands where such bodies are reinterred or a plan of any mausoleum or columbarium wherein such bodies may be deposited, and there shall also be attached to any such map or plat or plans a description of the name of each person whose body is so reinterred or deposited, where known, and the lot or plat in the cemetery or the niche or compartment in any mausoleum or columbarium where such body is reinterred or deposited. Such map or plat shall be kept on file in the office of such cemetery corporation, association, corporation sole or other person making such removals and reinterments or depositing bodies in a mausoleum or columbarium and shall at all times be open to inspection by the relatives or friends of those so reinterred or deposited.

Section 11-47-69 Care, etc., of lands, etc., in which remains reinterred.

Whenever any cemetery corporation or association having a board of directors or other governing body shall have caused the removal from any cemetery or part thereof owned by it or under its charge or control the human remains therein interred and said cemetery corporation or association shall have funds in its treasury which are not required for other purposes of said corporation, said corporation shall have power to set aside, invest, use and apply from such unexpended funds such sum as, in the judgment of the directors of said corporation, shall be necessary or expedient to provide for the perpetual or other care or improvement of any lands or mausoleum or columbarium or part thereof in which said remains may be reinterred or deposited; provided, however, that in lieu of itself investing, using or applying said funds for the purposes in this section specified, said cemetery corporation may transfer said funds to any other corporation under such conditions and regulations as in the judgment of the directors of said cemetery corporation will insure the application thereof to the purposes in this section specified; provided further, that before any such transfer of such funds is made said cemetery corporation or association shall have obtained an order authorizing such transfer from the probate court of the county where the cemetery or part thereof abandoned under the provisions of this division is situated. Such order shall be obtained upon petition of said cemetery corporation and any member of said corporation may support or oppose the granting of the order by affidavit or otherwise. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to transfer such funds has been given by publication in such manner and for such time as the court has directed and that it is for the best interests of the said cemetery corporation that such transfer be made.

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Section 11-47-70 Removal, etc., of monuments, headstones, etc., from graves from which remains removed.

(a) Whenever the remains of any person shall have been removed from any cemetery by any relative or friend of such person under the provisions of Section 11-47-65, the person causing such removal shall also be entitled to remove any vault, monument, headstone, coping or other improvement appurtenant to the grave from which such remains have been removed, and the affidavit or written consent given under the provisions of Section 11-47-65 shall be sufficient warrant and authority for the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery to permit such removal of any vault, monument, headstone, coping or other improvement appurtenant to such grave.

(b) Whenever the remains of any person buried in any lot or plat shall have been removed and any vault, monument, headstone, coping or other improvement appurtenant thereto shall remain on said lot or plat for more than 90 days after the removal of the last human remains therefrom, such vault, monument, headstone, coping or other improvement may be removed and disposed of by the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands and thereafter no person claiming any interest in said lot or plat or any such vault, monument, headstone, coping or other improvement appurtenant thereto shall have the right to maintain in any court any action in relation to any such vault, monument, headstone, coping or other improvement so removed or disposed of.

Section 11-47-71 Sale, etc., of lands in abandoned cemeteries by corporations, etc.; confirmation of sales by probate court.

(a) Whenever such a cemetery or part thereof has been abandoned as a cemetery or place of burial for the human dead as provided for in Section 11-47-60 by the cemetery corporation, association, corporation sole or other person owning or controlling the same, the parts or portions thereof in which no interments had been made and such parts and portions thereof from which all human remains have been removed may be sold by the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery land or may be mortgaged or otherwise pledged as security for any loan or loans made to such cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands. No order of any court shall be required prior to the making of any such sale, mortgage, pledge or other encumbrance of such lands abandoned for cemetery purposes or from which the human remains have been removed; provided, however, that any sale of such cemetery lands made by any cemetery corporation or association controlled by a board of directors or other governing body shall be fairly conducted and the price paid therefor must be fair and reasonable and all such sales must be confirmed, as to the fairness and reasonableness of the price paid by the probate court of the county in which such lands are situated.

(b) Petitions for confirmation of such sales by cemetery corporations and associations governed by a board of directors or other governing body shall be made to the probate court of the county wherein such lands are situated, and the judge of said court shall fix a day for the hearing and give notice thereof by publication in accordance with the provisions of Section 43-2-445, relating to confirmation of sales of real estate by an executor or administrator.

Section 11-47-72 Filing, etc., of declaration as to removal of all remains from abandoned cemetery.

After the removal of all human remains interred in any part or the whole of the cemetery lands abandoned as a burial place for the human dead as provided in this division, the cemetery corporation, association, corporation sole or other person owning or controlling such cemetery lands may file for record in the office of the judge of probate of the county in which such lands are situated a written declaration reciting that all human remains have been removed from the part or portion of such lands described in such declaration. Such declaration shall be acknowledged in the manner of the acknowledgment of deeds to real property by the president and secretary or other corresponding officers of such cemetery corporation or association or by the incumbent of any

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such corporation sole or by the persons owning or controlling such cemetery lands, and thereafter any deed, mortgage or other conveyance of any part of said lands shall be conclusive evidence in favor of any grantee or mortgagee therein named his successor or assigns of the fact of the complete removal of all human bodies therefrom.

Section 11-47-73 Payment of expenses of abandonment and removal by corporations, etc.; disposition of funds of corporation, etc., remaining thereafter.

(a) Whenever any cemetery corporation or association shall have resolved upon the abandonment of any cemetery or part thereof and the removal of the human remains therefrom under the provisions of this division, such cemetery corporation or association shall have power to employ any moneys in its treasury to defray the expense of such abandonment and removal, including the expense of purchasing or otherwise providing a suitable place for the interment or depositing of such remains in any other cemetery, mausoleum or columbarium in this state, including the expenses of disinterment, transportation and reinterment or the depositing of such remains in such mausoleum or columbarium, the expenses of the removal and disposal of such vaults, monuments, headstones, coping or other improvements which may remain after the human bodies are removed from any such cemetery or part thereof, all necessary expenses incident to the sale or mortgaging of any of said lands, all other expenses necessarily incurred in carrying out such abandonment of such cemetery lands and the removal and reinterment or disposing of the bodies so removed and all other expenses incident to any of the above purposes.

(b) Any moneys remaining in the treasury of such cemetery association or corporation after making the removal and reinterment of the bodies from such cemetery lands shall be retained and used as a fund for the perpetual maintenance and care of the cemetery lands wherein such bodies so removed have been interred or for the maintenance and care of any memorial mausoleum or columbarium in which said human remains have been deposited or such fund may be used for such other purposes as such cemetery corporation or association may lawfully declare.

Section 11-47-74 Removal of remains, etc., from cemeteries owned by churches, etc.

Nothing contained in this division shall authorize or permit or be construed or deemed to authorize or permit the heirs, relatives or friends of any deceased person whose body has been interred in any cemetery owned, governed or controlled by any religious corporation or by any church or religious society or any denomination or by any corporation sole administering temporalities of any religious denomination, society or church or owned, governed or controlled by any person or persons as trustee or trustees for any religious denomination, society or church to disinter, remove, reinter or dispose of any such body except in accordance with the rules, regulations and discipline of such religious denomination, society or church.

Title 11 COUNTIES AND MUNICIPAL CORPORATIONS

Title 3 PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS

Section 11-80-13 Cemetery rehabilitation authorities.

(a)(1) County commissions may establish a county cemetery rehabilitation authority, hereinafter authority, to designate, register, and maintain neglected cemeteries lying outside any municipal area within the county.

(2) When a county commission establishes an authority, it shall appoint a board to oversee the duties given to the authority. Each board member shall serve at the pleasure of the county commission.

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(3) City governments have the same power to establish a city cemetery rehabilitation authority and a board to oversee the registration and maintenance of neglected cemeteries within their municipal limits.

(4) Governments are encouraged to include on their board representatives of genealogical and historical societies and other citizens who have shown an interest in preserving cemeteries.

(b) In the absence of action by the appropriate governing body, any citizen may submit, in writing, a request to the appropriate governing body that the governing body establish a cemetery rehabilitation authority, and such request shall be spread upon the minutes of the next meeting of the appropriate governing body following receipt of such request.

(c) A cemetery rehabilitation authority created herein may accept the assistance of private citizens as well as money donated by private citizens or family, in order to afford the upkeep and restoration of cemeteries designated as neglected. A trust fund may be established to supply continuing needs over a long period of time.

(d) The cemetery authority may work with private landowners to determine the frequency of access, either for specified work days or for visits by family to restore and or maintain the graves, or by genealogical researchers.

(e) The county commission of each county may provide for the identification, cataloguing, or recording of neglected cemeteries. A copy of all surveys shall be forwarded to the Alabama Historical Commission for establishment of a statewide inventory. If the county or city has a cemetery rehabilitation authority, this duty may be delegated to that authority.

(f) The authority or the county commissions of each county shall provide for the registration, with the Historical Commission, of each neglected cemetery within the county, unless the cemetery has been previously registered. The registration shall take place within one year of notification being made to the board by any interested party of the existence of the neglected cemetery.

(g) No county or municipality nor any person under the supervision or direction of the county or municipality, providing good faith assistance in securing or maintaining a cemetery under this section, may be subject to civil liabilities or penalties of any type.

(Act 2007-408, p. 836, §2.)

Code of Alabama 1975, Title 13A (Criminal Code) Article 2, CRIMINAL DAMAGE TO PROPERTY

[Ed.: The following definitions and punishments of the Criminal Code are provided for reference only.]

Section 13A-5-3 Classification of offenses.

(a) Offenses are designated as felonies, misdemeanors or violations.

(b) Felonies are classified according to the relative seriousness of the offense into three categories:

(1) Class A felonies;

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- (2) Class B felonies; and*
- (3) Class C felonies.*
- (c) Misdemeanors are classified according to the relative seriousness of the offense into three categories:*
 - (1) Class A misdemeanors;*
 - (2) Class B misdemeanors; and*
 - (3) Class C misdemeanors.*
- (d) Violations are not classified.*

Section 13A-5-6 Sentences of imprisonment for felonies.

- (a) Sentences for felonies shall be for a definite term of imprisonment, which imprisonment includes hard labor, within the following limitations:*
 - (1) For a Class A felony, for life or not more than 99 years or less than 10 years.*
 - (2) For a Class B felony, not more than 20 years or less than 2 years.*
 - (3) For a Class C felony, not more than 10 years or less than 1 year and 1 day.*
 - (4) For a Class A felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, not less than 20 years.*
 - (5) For a Class B or C felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, not less than 10 years.*
- (b) The actual time of release within the limitations established by subsection (a) of this section shall be determined under procedures established elsewhere by law.*

Section 13A-5-7 Sentences of imprisonment for misdemeanors and violations.

- (a) Sentences for misdemeanors shall be a definite term of imprisonment in the county jail or to hard labor for the county, within the following limitations:*
 - (1) For a Class A misdemeanor, not more than one year.*
 - (2) For a Class B misdemeanor, not more than six months.*
 - (3) For a Class C misdemeanor, not more than three months.*
- (b) Sentences for violations shall be for a definite term of imprisonment in the county jail, not to exceed 30 days.*

Section 13A-5-11 Fines for felonies.

- (a) A sentence to pay a fine for a felony shall be for a definite amount, fixed by the court, within the following limitations:*
 - (1) For a Class A felony, not more than \$20,000.00;*
 - (2) For a Class B felony, not more than \$10,000.00;*
 - (3) For a Class C felony, not more than \$5,000.00; or*
 - (4) Any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.*
- (b) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized or surrendered to lawful authority prior to the time sentence is imposed. "Value" shall be determined by the standards established in subdivision (14) of Section 13A-8-1.*
- (c) The court may conduct a hearing upon the issue of defendant's gain or the victim's loss from the crime according to procedures established by rule of court.*

Section 13A-5-12 Fines for misdemeanors and violations.

- (a) A sentence to pay a fine for a misdemeanor shall be for a definite amount, fixed by the court, within the following limitations:*
 - (1) For a Class A misdemeanor, not more than \$2,000.00;*
 - (2) For a Class B misdemeanor, not more than \$1,000.00;*
 - (3) For a Class C misdemeanor, not more than \$500.00; or*

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- (4) Any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.*
- (b) A sentence to pay a fine for a violation shall be for a definite amount, fixed by the court, not to exceed \$200.00, or any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.*
- (c) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized or surrendered to lawful authority prior to the time sentence is imposed. "Value" shall be determined by the standards established in subdivision (14) of Section 13A-8-1.*
- (d) The court may conduct a hearing upon the issue of defendant's gain or the victim's loss from the crime according to procedures established by rule of court.*

Section 13A-7-23 Criminal mischief in the third degree.

- (a) A person commits the crime of criminal mischief in the third degree if, with intent to damage property, and having no right to do so or any reasonable ground to believe that he or she has such a right, he or she inflicts damages to property in an amount not exceeding five hundred dollars (\$500).
- (b) Criminal mischief in the third degree is a Class B misdemeanor.

[Ed.: Section 13A-7-23.1 of the Alabama Criminal Code provides the following relative to protecting cemeteries. Please note that *willfully* violating this law has the same weight as *maliciously* doing harm to the cemetery. Also note that subsections (c) and (d) define a strong roll for the Alabama Historical Commission (AHC). However, the AHC is not a law enforcement agency and any report of damage to a cemetery should be reported to the municipal or county law officials for further investigation and action.]

Section 13A-7-23.1 Desecration, defacement, etc., of memorial of dead; invasion or mutilation of corpse.

- (a) Any person who willfully or maliciously injures, defaces, removes, or destroys any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or any enclosure for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned, or for any enclosure for the burial of the dead, or any person who willfully and wrongfully or maliciously destroys, removes, cuts, breaks, or injures any tree, shrub, plant, flower, decoration, or other real or personal property within any cemetery or graveyard shall be guilty of a Class A misdemeanor.
- (b) Any person who willfully or maliciously desecrates, injures, defaces, removes, or destroys any tomb, monument, structure, or container of human remains, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, and invades or mutilates the human corpse or remains shall be guilty of a Class C felony and upon conviction the person shall be punished as provided by law.
- (c) The provisions of subsections (a) and (b) shall not apply to any person holding a permit issued by the Alabama Historical Commission pursuant to subsection (d), to anyone operating a cemetery under standard rules and regulations and maintenance procedures, or to any person otherwise authorized by law to remove or disturb a tomb, monument, grave marker, burial mound, earthen or shell monument, or similar structure,

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or its contents, as described in subsections (a) and (b), nor shall subsections (a) and (b) apply to any person authorized to take any action on municipal property.

(d) The Alabama Historical Commission, to provide for the lawful preservation, investigation, restoration, or relocation of human burial remains, human skeletal remains, or funerary objects, shall promulgate rules and regulations for the issuance of a permit and may issue a permit to persons or companies who seek to restore, preserve, or relocate human burial remains, human skeletal remains, funerary objects, or otherwise disturb, a place of burial.

(Acts 1980, No. 80-706, p. 1424; Acts 1993, No. 93-770, §1; Acts 1993, 1st Ex. Sess., No. 93-905, p. 201, §1; Act 2010-723, p. 1798, §1.)

Article 1 Offenses Against Public Order and Decency.

Section 13A-11-12 Desecration of venerated objects.

(a) A person commits the crime of desecration of venerated objects if he intentionally:

- (1) Desecrates any public monument or structure or place of worship or burial; or
- (2) Desecrates in a public place the United States or Alabama flag or any other object of veneration by the public or a substantial segment thereof.

(b) Desecration of venerated objects is a Class A misdemeanor.

Section 13A-11-13 Abuse of corpse.

(a) A person commits the crime of abuse of a corpse if, except as otherwise authorized by law, he knowingly treats a human corpse in a way that would outrage ordinary family sensibilities. Abuse of a corpse may include knowingly and willfully signing a certificate as having embalmed, cremated, or prepared a human body for disposition when, in fact, the services were not performed as indicated.

(b) Abuse of a corpse is a Class C felony.

Title 14 - CRIMINAL CORRECTIONAL AND DETENTION FACILITIES. Chapter 5 - CONVICT LABOR.

[Ed: This section in the Code of Alabama allows using convicts to clean public cemeteries.]

Section 14-5-30 Legislative intent.

It is the intent of the Legislature to require the Department of Corrections to develop, within six months after July 31, 1995, a manual labor work program for all inmates. This should also include the development of community-based manual labor camps. The manual labor required of the inmate shall be as rigorous as the department feels is justified, but shall consist primarily of the removal of litter from the highways of this state, the cleaning of unauthorized dumps and public cemeteries, the growing and raising of food for use by inmates or for sale to reduce the costs of incarceration to the taxpayers, and the cleaning and maintenance of public parks, or municipal, county, or state property. It is the further intent of the Legislature to require the department to assign all inmates who do not have a mental or physical impairment which would prevent them from performing manual labor to the manual labor work program and to develop a work incentive program.

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Section 14-5-33 Emphasis of program on removal of litter from highways, cleaning of unauthorized dumps and public cemeteries, etc.

The main emphasis of the manual labor program of the Department of Corrections shall be the removal of litter from the highways of this state, the cleaning of unauthorized dumps and public cemeteries, the growing and raising of food for use by inmates or for sale to reduce the costs of incarceration to taxpayers, and the cleaning and maintenance of public parks, or municipal, county, or state property.

Title 18 EMINENT DOMAIN

Chapter 1A EMINENT DOMAIN GENERALLY

Article 4 Commencement of Action by Condemnor

Section 18-1A-72 Contents of complaint; property already subject to public use; easement to cross line of another railroad; map or diagram to accompany complaint.

- (a) In addition to other allegations required or permitted by law, the complaint shall:
- (1) Designate as a plaintiff each person on whose behalf the property is sought to be taken;
 - (2) Name as defendants all persons who to the plaintiff's knowledge are owners of or who have or claim any interest in the property sought to be taken; specify the nature of each defendant's interest. Defendants whose names are not known may be included under the designation "unknown claimants" provided reasonable diligence has been used to ascertain the same, and where the interest of the defendant is unknown the complaint may so state;
 - (3) Contain a legal description of the property and of the interest therein sought to be taken;
 - (4) Allege the basis of the plaintiff's right to take the property by eminent domain and maintain the action, including (i) a reference to the plaintiff's legal authority to take the property; and (ii) a statement of the purpose for which the property is sought to be taken; and
 - (5) List all items which the condemnor proposes to acquire and which it deems to be equipment or fixtures attached to or a part of the realty.
- (b) If the property sought to be condemned or any portion thereof or interest therein has already been subjected to or devoted to a public use, such land or portion thereof or interest therein shall not be taken for another and different character of public use, unless an actual necessity for the specific land or portion thereof or interest therein shall be alleged and proven and unless it be alleged and proven that such other and different character of public use will not materially interfere with the public use to which such property is already subjected or devoted.
- (c) Any corporation, person or association of persons owning a railroad or street railroad in this state and proposing to cross or intersect the line of another railroad or street railroad may acquire an easement for such purpose and to that end may pursue the mode of proceeding prescribed in this chapter.
- (d) For purposes of information and notice, the complaint shall be accompanied by a map or diagram portraying the property sought to be taken and the remainder, if any.

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Code of Alabama 1975, Title 18 (Eminent Domain)
Chapter 3, ACQUISITION OF RIGHTS-OF-WAY BY PRIVATE PARTIES
Article 2, Right-of-Way to Certain Cemeteries or Graveyards

[Ed: This section of the Code of Alabama provides the provision to obtain the right of access to otherwise land-locked cemeteries with non-cooperative landowners.]

Section 18-3-20 Acquisition; width.

Where a cemetery or graveyard has been used by the public as a place for burying the dead for 20 years or more and no part of said cemetery or graveyard is adjacent or contiguous to any public road or highway, any person who has, or any persons who have, relatives or relations buried in said cemetery or graveyard shall have the right to acquire and may acquire a convenient right-of-way, not exceeding in width 15 feet, over the lands intervening and lying between such cemetery or graveyard or body of land on which the same is situated and the public road or highway nearest or most convenient thereto.

(Acts 1927, No. 475, p. 520; Code 1940, 7: 19, §59.)

Section 18-3-21 Right-of-way through yard, garden, orchard, etc.; payment of compensation and damages for right-of-way.

In the establishment and condemnation of such right-of-way, no road or right-of-way shall be established through any person's yard, garden, orchard, stable lot, stable, gin house or curtilage without the consent of the owner; and the applicant must pay the owner for the value of the land taken and compensation for damage to the land, through which said right-of-way is established, resulting from the establishment of such road or right-of-way. .

(Acts 1927, No. 475, p. 520; Code 1940, 7: 19, §60.)

Section 18-3-22 Application to probate court.

The right conferred by this article shall be exercised by application to the probate court of the county in which the lands over which such right-of-way is desired, or a material portion thereof are situated, and the same proceedings shall be had as in cases of condemnation of lands for public uses as provided by Chapter 1A of this title.

(Acts 1927, No. 475, p. 520; Code 1940, T. 19, §55.)

Title 22 HEALTH, MENTAL HEALTH AND ENVIRONMENTAL CONTROL

Chapter 20 MISCELLANEOUS HEALTH LAW

Section 22-20-4 Location and extension of cemeteries.

Whenever it is proposed to locate a cemetery or to extend the boundaries of an existing cemetery, the party or parties so proposing shall make written application to the judge of probate and county commission or to the mayor and council of an incorporated city or town, according to whether said cemetery or extension of a cemetery is to be located in the jurisdiction of one or the other of these authorities, describing accurately the location and boundaries of the proposed cemetery or extension of a cemetery. Before acting upon the application, the judge of probate and county

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commission or the mayor and council of an incorporated city or town, as the case may be, shall refer the application to the board of health of the county for investigation from a sanitary standpoint. In making such investigation, the county board of health shall take into consideration the proximity of the proposed cemetery or extension of a cemetery to human habitations, the nature of the soil, the drainage of the ground, the danger of pollution of valuable springs and streams of water and such other conditions and surroundings as would bear upon the sanitary aspect of the situation. Having completed its investigation as promptly as can be done, the county board of health shall submit a report to the judge of probate and county commission, or to the mayor and council, as the case may be, and either approve or disapprove the application. If the latter, the board shall set forth at length its reasons for such disapproval. Having received the report from the county board of health, the judge of probate and county commission or the mayor and council, as the case may be, shall either grant or deny the application, giving due weight in reaching either conclusion to the views expressed by the County Board of Health. Should the application be granted, the judge of probate and county commission or the mayor and council, as the case may be, shall issue to the party or parties making the application, and in such form as they may prescribe, a license to establish or extend the cemetery in question. The said license shall, upon the payment of \$.50 by the party or parties making the application, be recorded in the office of the judge of probate of the county.

Title 35 PROPERTY Chapter 1 GENERAL PROVISIONS

Section 35-1-4 Right of access to cemetery on privately owned or leased property.

(a) Owners and lessees of private land on which a cemetery, graves, or burial sites are located shall have a duty to allow ingress and egress to the cemetery, graves, or burial sites by (1) family members, friends, or descendants of deceased persons buried there; (2) any cemetery plot owner; and (3) any person engaged in genealogical, historical, or cultural research, who has given reasonable notice to the owner of record or to the lessees, or both.

(b)(1) The right of ingress and egress granted by this section shall be reasonable and limited to the purposes of visiting graves or burial sites, maintaining the gravesite or burial site or cemetery, or conducting genealogical, historical, or cultural research, or, in the case of a plot owner, burying a deceased person in the plot.

(2) The owner or lessee of the land has the right to designate the frequency, hours, and duration of the access and the access route, if no traditional access route is obviously visible from a view of the property, provided that the designation is reasonable for the purposes set out above.

(c)(1) Any person entering onto private land pursuant to this section shall be responsible for conducting himself or herself in a manner that does not damage the private land, cemetery, gravesite, or burial site, and shall be liable to the owner or lessee of the property for any damage caused as the result of his or her access.

(2) The landowner and lessee, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, action, or cause of action arising out of the access granted pursuant to this section.

(Act 2007-408, p. 836, §1.)

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Title 41 STATE GOVERNMENT
Chapter 3 ABORIGINAL MOUNDS, EARTHWORKS AND OTHER
ANTIQUITIES

Section 41-3-1 Reservation of exclusive right and privilege of state to explore, excavate or survey aboriginal mounds, earthworks, burial sites, etc.; state ownership of objects found or located therein declared.

The State of Alabama reserves to itself the exclusive right and privilege of exploring, excavating or surveying, through its authorized officers, agents or employees, all aboriginal mounds and other antiquities, earthworks, ancient or historical forts and burial sites within the State of Alabama, subject to the rights of the owner of the land upon which such antiquities are situated, for agricultural, domestic or industrial purposes, and the ownership of the state is hereby expressly declared in any and all objects whatsoever which may be found or located therein.

Section 41-3-2 Nonresidents not to explore or excavate remains or carry away, etc., from state objects discovered therein, etc.

No person not a resident of the State of Alabama, either by himself personally or through any agent or employee or anyone else acting for such person, shall explore or excavate any of the remains described in Section 41-3-1 or carry or send away from the state any objects which may be discovered therein or which may be taken therefrom or found in the vicinity thereof.

Section 41-3-3 Explorations or excavations of remains not to be done without consent of owner of land and not to injure crops, houses, etc., thereon.

No explorations or excavations shall be made in any of such remains without the consent of the owner of the land first had and obtained and unless such work is done in such way as not to injure any crops, houses or improvements on the land adjacent to or forming a part of such remains.

Section 41-3-4 Explorations or excavations not to destroy, deface, etc., remains; restoration of remains after explorations or excavations.

No explorations or excavations shall be made which will destroy, deface or permanently injure such remains; and, after any such explorations or excavations, they shall be restored to the same or like condition as before such explorations or excavations were made.

Section 41-3-5 Disposition of objects taken from remains.

No objects taken from such remains shall be sold or disposed of out of the state, but when removed therefrom the objects so gathered shall be retained in state custody and either placed in the collection of the Department of Archives and History or in the museums or in the libraries of the educational or other institutions of the state or they may be exchanged for similar or other objects from other states, museums, libraries or individuals.

Section 41-3-6 Exploration or excavation of aboriginal mounds, earthworks, etc., contrary to law.

Any person who shall explore or excavate any of the aboriginal mounds, earthworks or other antiquities of this state contrary to the laws of this state shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000.00 for each offense.

**Title 41 STATE GOVERNMENT
Chapter 9 BOARDS AND COMMISSIONS
Article 10 Historical Commissions.
Division 1 Alabama Historical Commission**

Section 41-9-242 Purpose of commission.

The purpose of the Alabama Historical Commission, hereinafter referred to as the commission, shall be to acquire in its own name or in the name of the State of Alabama by purchase, devise, lease, assignment, license, condemnation, gift, bequest, transfer or otherwise buildings, objects and sites deemed worthy of being preserved, improved, protected and maintained for or on account of their particular historic, archaeological or architectural significance, including adjacent properties deemed necessary for the proper setting, use and administration of same, and said buildings, objects and sites shall include, but shall not be limited to, the following:

- (1) Buildings in which events of great significance to Alabama's or the nation's history have taken place and the sites surrounding them;
- (2) Birthplaces or residences of outstanding personages and the sites surrounding them;
- (3) The sites of historic or significant events in Alabama or United States history, including military engagements, Indian treaties and massacres;
- (4) Buildings of significant or outstanding architectural value;
- (5) Buildings, sites, objects or monuments of special significance to our cultural, military, social, economic, religious or commercial heritage, including post roads, traces, ruins, railroads, plantations, wharfs, missions, places of treaties, cemeteries, fortifications and places of worship; and
- (6) Archaeological sites for excavational, salvage, protective and interpretative purposes.

Section 41-9-249 Powers and duties of commission generally.

The commission shall have the following duties and powers:

- (1) To promote and increase knowledge and understanding of the history of this state from the earliest time to the present, including the archaeological, Indian, Spanish, British, French, Colonial, Confederate and American eras, by adopting and executing general plans, methods and policies for permanently preserving and marking objects, sites, structures and ruins as defined in Section 41-9-242;
- (2) To promote and assist in the publicizing of the historic resources of the state by preparing and furnishing information to public mass media and to governmental agencies charged with publicity and to coordinate any of its objectives, efforts or functions with any agency or agencies of the federal government, of the State of Alabama and of other states or local governments having objectives similar or related to those of the commission;
- (3) To accept for renovation, maintenance, restoration, preservation or management and operation any building or site within the State of Alabama owned by the United States, the State of Alabama or any agency or subdivision thereof or by the national trust for historic preservation or by natural or corporate persons, public or private, upon such terms and conditions as to the commission shall be deemed in the best interest of the State of Alabama in conformity with the purposes of this division;
- (4) To acquire, by exercise of the power of eminent domain, historic structures of paramount or exceptional importance, such as those Alabama landmarks eligible for nomination to or recorded in the National Register of Historic Places; provided, that at least two-thirds of the members of the commission shall vote to acquire such structures by the exercise of this measure;
- (5) To charge admissions at the various buildings and sites under the control of the commission throughout the state and to sell booklets, pamphlets and souvenirs at said locations and to retain and use the proceeds of said sales and admissions for the furtherance of the purposes of the commission as defined by this division;
- (6) To adopt a seal for the commission and to use the same on its brochures, stationery and other official publications and upon its historic site markers;

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- (7)a. To acquire, receive and take title to, by purchase, gift, lease, devise or otherwise, and to own, to hold, keep and develop, and to sell, transfer, convey, lease, and assign to any person or otherwise dispose of property of every kind and character, whether real, personal or mixed, whether tangible or intangible, whether in trust or otherwise, together with any and every interest therein, in furtherance of the lawful objectives of the commission;
 - b. To negotiate for Dismals Wonder Gardens in Franklin County; to be held in trust for the Alabama Indian Commission. The administration of said property shall be by and with consultation with the Alabama Historical Commission and the Alabama Indian Commission for the preservation of the historical heritage of said property and shall utilize any proceeds therefrom, including interest on any investments, for the preservation of the property;
 - c. To administer such property or trusts, whenever any such property is received or held to be used for the benefit of the historical heritage of the State of Alabama, for preservation of historic sites, buildings and objects, or for other lawful objectives of the commission, as it deems in the best interest of historical preservation or in furtherance of the objective for which the property is held or the donation or gift is made; and to convert such property or any portion thereof into securities or other forms of property and use the proceeds therefrom, including any interest on investments, as it deems will best promote the objectives of the commission;
 - d. To accept as trustee, beneficiary, or both, any interest in such property, together with any proceeds from its investment, for the benefit of historical preservation or other purposes of the commission, upon such conditions as may be acceptable to the donor and the commission. No such undertaking entered into by the commission or its agent or agents shall bind the state to pay any state moneys to anyone; provided, however, that nothing herein shall prevent the commission from undertaking payments out of the proceeds from such trust funds as a condition of the acceptance of the donation. All trust funds administered pursuant to this act may be required by the commission to pay the expenses of administering the same. Such gifts shall be deductible from Alabama state income tax by the donor or donors;
 - e. To convey title or any interest in real estate by deed or other instrument executed by a majority of the commissioners or by agent or agents authorized by a majority vote of the commission; and to convey property other than real estate by agent or agents authorized by a majority vote of commissioners present and voting.
- (8) To maintain an office in a location in the state to be selected by the commission for the use of the executive director, the employees and the commission and to acquire the necessary furniture and equipment therefor;
- (9) To prepare, create, purchase and distribute pamphlets and brochures describing the various historic buildings and sites under the jurisdiction of the State of Alabama or any of its agencies;
- (10) To make and publish a survey of the buildings, ruins and sites of historic, architectural or archaeological significance within the State of Alabama and to make available such survey to individuals, institutions and governmental bodies desiring copies of same;
- (11) To determine from such survey the buildings, ruins and sites listed therein which are considered worthy of permanent preservation, to certify same as being worthy and to publish said list;
- (12) To establish criteria for the certification, selection and acquisition of historic properties for state ownership and for state aid to local historic site projects;
- (13) To nominate selected landmarks with historic, architectural and archaeological significance to the National Register of Historic Places using priorities established by the commission;
- (14) To establish and maintain an Alabama state historic preservation depository into which may be deposited antiques, relics, artifacts, mementos, paintings and other objects contributed to or acquired by the state or the commission. The commission shall have the authority to restore these objects and to use them for the furnishing of its own historic buildings and other selected landmarks in Alabama;
- (15) To rent or lease any of its acquisitions to public or private agencies;
- (16) To publish an informational newsletter which shall periodically report on and promote local, regional and state historic preservation activities;
- (17) To produce and publish technical ("how to") manuals on historic preservation;

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- (18) To publish and present citations and distinguished service awards to selected private and public organizations and individuals for outstanding achievements in preserving the heritage of Alabama;
- (19) To purchase, produce, sell and distribute historic souvenir items;
- (20) To improve, restore, preserve, renovate, maintain, exhibit, repair, rebuild, recreate and reconstruct its acquisitions, and the commission shall have jurisdiction over the same and the exhibits located thereon;
- (21) To purchase or otherwise acquire and to erect and maintain "historic markers" on such buildings, roads, trails, routes and sites as it shall designate and to cooperate with and assist local, regional and state historical groups in selecting and erecting such markers; and
- (22) To accept the gift of money and real and personal property from any and all public and private sources. Such gifts shall be deductible from Alabama state income tax by the donor.

Title 45 - LOCAL LAWS

Section 45-22-30 [Cullman County] Cemetery board.

- (a) For the purposes of this section, the following terms shall have the following meanings:
 - (1) BOARD. The Cullman County Cemetery Board.
 - (2) CEMETERY. Any for profit cemetery in the county where property is used or intended to be used for the interment of human remains, including, but not limited to, any property containing a grave, lot, crypt, niche, or mausoleum and any gravestone, headstone, or other marker therein.
 - (3) MAINTENANCE. The act of maintaining a cemetery, including, but not limited to, any of the following:
 - a. The cutting and trimming of the lawn, shrubs, and trees.
 - b. Keeping in repair the drains, water lines, roads, buildings, fences, and other structures located in the cemetery.
 - c. The service and repair of machinery, tools, and equipment used for the maintenance of the cemetery.
 - (4) NEGLECTED CEMETERY. A cemetery that has become abandoned or neglected in any of the following ways:
 - a. Weeds, briars, bushes, or trees have become overgrown.
 - b. Fences have become broken, decayed, or dilapidated.
 - c. Graves, lots, crypts, niches, mausoleums, and markers and roads, buildings, or other structures in a cemetery which have become damaged, broken, dilapidated, or destroyed.
- (b)(1) The Cullman County Cemetery Board is created.
- (2) The board shall consist of five members.
- (3) One member of the board shall be appointed by each member of the local legislative delegation, and the local legislative delegation, by majority vote, shall appoint an additional member, who shall serve as the chair of the board. The members shall serve at the pleasure of the local legislative delegation.
- (4) The board shall meet quarterly and at such times as the board by a majority of its members agree.
- (5) The board may adopt necessary rules or procedures to conduct its business.
- (6) Members of the board shall serve without compensation, but may be reimbursed for actual expenses incurred while conducting the business of the board, according to its rules or procedures.
- (c)(1) The board shall be responsible for all of the following duties:

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- a. Negotiating the acquisition of any neglected for-profit cemetery in the county, including a cemetery owned by a private entity.
 - b. Supervising the clean up and maintenance of any neglected cemetery under its authority.
 - c. Coordinating with the sheriff to provide inmate labor to perform the maintenance of any neglected cemetery.
 - d. Purchasing equipment and other necessary materials to perform the functions of the board.
 - e. At its discretion, transferring the ownership of a cemetery under its authority to a nonprofit board.
 - f. Any other business necessary to carry out the purposes of this section.
- (2) The board may only perform maintenance on a private cemetery if the board finds after a hearing that the condition of the cemetery is a public nuisance.
- (d)(1)a. Subject to subdivision (2) of subsection (c), fifty thousand dollars (\$50,000) shall be made available to the board from the county general fund when the board takes action by majority vote to acquire a for-profit neglected cemetery under this section. The funds shall come from the sales tax revenues deposited in the county general fund.
- b. Fifty thousand dollars (\$50,000) is the maximum amount available to the cemetery board under this section.
- (2) The funds made available for the purposes of this section shall come only from the sales tax revenues collected in the fiscal year 2016 and thereafter that is greater than the sales tax revenues collected and deposited in the county general fund in the fiscal year 2015.
- (e)(1) The county commission shall have no authority over the board, and the county commission shall have no responsibility over a cemetery in the county, as defined by this section.
- (2) The county commission may appropriate funds to the cemetery board.
- (f) Members of the board may not be subject to civil liability arising from the conduct of the affairs of the board except when the act or omission of the member of the board amounts to willful or wanton misconduct, fraud, or gross negligence.

(Act 2016-366, §§2-7.)

Section 45-37-30 [Jefferson County] Cemetery Board.

- (a) For the purposes of this section, the following terms shall have the following meanings:
- (1) BOARD. The Jefferson County Cemetery Board.
 - (2) CEMETERY. Any for profit cemetery in the county where property is used or intended to be used for the interment of human remains, including, but not limited to, any property containing a grave, lot, crypt, niche, or mausoleum and any gravestone, headstone, or other marker therein.
 - (3) MAINTENANCE. The act of maintaining a cemetery, including, but not limited to, the cutting and trimming of the lawn, shrubs, and trees.
 - (4) NEGLECTED CEMETERY. A cemetery that has become abandoned or neglected in any of the following ways:
 - a. Weeds, briars, bushes, or trees have become overgrown.
 - b. Fences have become broken, decayed, or dilapidated.
 - c. Graves, lots, crypts, niches, mausoleums, and markers and roads, buildings, or other structures in a cemetery have become damaged, broken, dilapidated, or destroyed.

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- (b)(1) The Jefferson County Cemetery Board is created.
- (2) The board shall consist of seven members.
- (3) Four members of the board shall be appointed by the members of the State House of Representatives representing any part of the county, and three members shall be appointed by the members of the State Senate representing any part of the county. The local legislative delegation, by majority vote, shall appoint one of the members to serve as the chair of the board. The members shall serve at the pleasure of the appointing authority.
- (4) a. The initial board members appointed in accordance with subdivision (3) shall serve the following terms:
 - 1. Two members appointed by a member of the House of Representatives and one member appointed by a member of the Senate shall serve a two-year term.
 - 2. One member appointed by a member of the House of Representatives and one member appointed by a member of the Senate shall serve a three-year term.
 - 3. One member appointed by a member of the House of Representatives and one member appointed by a member of the Senate shall serve a four-year term.
- b. After the expiration of the initial term of office of each board member, the term of office for all board members shall be four years.
- (5) The board shall meet quarterly and at such times as the board by a majority of its members agree.
- (6) The board may adopt necessary rules or procedures to conduct its business.
- (7) Members of the board shall serve without compensation, but may be reimbursed for actual expenses incurred while conducting the business of the board, according to its rules or procedures.
- (8) Board members shall serve on a volunteer basis, except that they shall be reimbursed for actual expenses that shall be verified and submitted to the Jefferson County Commission.
- (c) There shall be established within the Jefferson County Budget Division, a Jefferson County Cemetery Account funded by revenue from the pistol permits portion dedicated to the Jefferson County delegation.
- (d)(1) The board shall be responsible for all of the following duties:
 - a. Supervising the clean up and maintenance of any neglected cemetery under its authority.
 - b. Coordinating with the sheriff to provide inmate labor to perform the maintenance of any neglected cemetery.
 - c. Purchasing office equipment up to \$500 and other necessary materials to perform the functions of the board.
 - d. Any other business necessary to carry out the purposes of this section.
- (2) The board may only perform maintenance on a private cemetery if the board finds after a hearing that the condition of the cemetery is a public nuisance.
- (3) The board shall have the authority to enforce all rules adopted pursuant to this section and may institute any legal proceeding, including the filing of a suit, as necessary to effect compliance with this section.
- (e) Fifty thousand dollars (\$50,000) shall be made available to the board from the pistol permit fees collected by the county and twenty-five thousand dollars (\$25,000) from the pistol permit fees for each year thereafter.
- (f) The county commission shall have no authority over the board and the county commission shall have no responsibility over a cemetery in the county, as defined by this

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section, and no county funds shall be expended as a result of the implications or implementation of this section.

(g) Members of the board may not be subject to civil liability arising from the conduct of the affairs of the board except when the act or omission of the member of the board amounts to willful or wanton misconduct, fraud, or negligence.

(h) This section shall only apply to cemeteries in existence on May 26, 2017.

(i) A cemetery owned by a religious organization, as defined by Section 45-37-150.01, or a private, family-owned cemetery, is exempt from this section.

(Act 2017-439, §§2-10.)

Compiled by: H. T. "Ted" Urquhart, Jr.
Alabama Cemetery Preservation Alliance, Inc. (ACPA)
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