

CHAPTER 72

ABANDONED CEMETERIES AND BURIAL GROUNDS

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Effective date. — This chapter became effective April 11, 1991.

36-72-1. Legislative findings and intent.

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

(b) It is the intent of the General Assembly that the provisions of this chapter be construed to require respectful treatment of human remains in accord with the equal and innate dignity of every human being and consistent with the identifiable ethnic, cultural, and religious affiliation of the deceased individual as indicated by the method of burial or other historical evidence or reliable information. (Code 1981, § 36-72-1, enacted by Ga. L. 1991, p. 274, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses identifying data, see 1991 Op. Att'y Gen. for which the Georgia Crime Information No. 91-35. Center is authorized to collect and file

36-72-2. Definitions.

As used in this chapter, the term:

(1) "Abandoned cemetery" means a cemetery which shows signs of neglect including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave markers or boundaries and for which no person can be found who is legally responsible and financially capable of the upkeep of such cemetery.

(2) "Archeologist" means any person who is:

(A) A member of or meets the criteria for membership in the Society of Professional Archaeologists and can demonstrate experience in the excavation and interpretation of human graves; or

(B) Employed on July 1, 1991, by the state or by any county or municipal governing authority as an archeologist.

(3) "Burial ground" means an area dedicated to and used for interment of human remains. The term shall include privately owned burial plots, individually and collectively, once human remains have been buried therein. The fact that the area was used for burial purposes shall be evidence that it was set aside for burial purposes.

(4) "Burial object" means any item reasonably believed to have been intentionally placed with the human remains at the time of burial or interment or any memorial, tombstone, grave marker, or shrine which may have been added subsequent to interment. Such term also means any inscribed or uninscribed marker, coping, curbing, enclosure, fencing, pavement, shelter, wall, stoneware, pottery, or other grave object erected or deposited incident to or subsequent to interment.

(5) "Cemetery" or "cemeteries" means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains. It may be either a burial park for earth interments or a mausoleum for vault or crypt interments or a combination of one or more thereof.

(6) "Descendant" means a person or group of persons related to a deceased human by blood or adoption in accordance with Title 19.

(7) "Genealogist" means a person who traces or studies the descent of persons or families and prepares a probative record of such descent.

File under:
Cemetery Records

(8) "Human remains" means the bodies of deceased human beings in any stage of decomposition, including cremated remains.

(9) "Preserve and protect" means to keep safe from destruction, peril, or other adversity and may include the placement of signs, markers, fencing, or other such appropriate features so as to identify the site as a cemetery or burial ground and may also include the cleaning, maintenance, and upkeep of the site so as to aid in its preservation and protection. (Code 1981, § 36-72-2, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 2508, § 1.)

The 1992 amendment, effective April 20, 1992, inserted the second sentence in paragraph (3), and in paragraph (9), inserted "may also include the cleaning, maintenance, and upkeep of the site" and substituted "its preservation and protection" for "the preservation and protection of such cemetery or burial ground" at the end.

36-72-3. Authority of counties and municipalities to preserve abandoned cemeteries.

Counties, anywhere within the county boundaries, and municipalities, anywhere within the municipal boundaries, are authorized, jointly and severally, to preserve and protect any abandoned cemetery or any burial ground which the county or municipality determines has been abandoned or is not being maintained by the person who is legally responsible for its upkeep, whether or not that person is financially capable of doing so, to expend public money in connection therewith, to provide for reimbursement of such funds by billing any legally responsible person or levying upon any of his property as authorized by local ordinance, and to exercise the power of eminent domain to acquire any interest in land necessary for that purpose. (Code 1981, § 36-72-3, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 2508, § 2.)

The 1992 amendment, effective April 20, 1992, rewrote this Code section to the extent that a detailed comparison is impracticable.

36-72-4. Permit required for developing land on which cemetery located.

No known cemetery, burial ground, human remains, or burial object shall be knowingly disturbed by the owner or occupier of the land on which the cemetery or burial ground is located for the purposes of developing or changing the use of any part of such land unless a permit is first obtained from the governing authority of the municipal corporation or county wherein the cemetery or burial ground is located, which shall have authority to permit such activity except as provided in Code Section 36-72-14. (Code 1981, § 36-72-4, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-5. Application for permit.

Application for a permit shall include, at a minimum, the following information:

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

(2) A report prepared by an archeologist stating the number of graves believed to be present and their locations as can be determined from the use of minimally invasive investigation techniques, including remote sensing methods and the use of metal probes, which activities shall not require a permit;

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

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

(5) A proposal for mitigation or avoidance of the effects of the planned activity on the cemetery or burial ground. If the proposal includes relocation of any human remains or burial objects, the proposal shall specify the method of disinterment, the location and method of disposition of the remains, the approximate cost of the process, and the approximate number of graves affected. (Code 1981, § 36-72-5, enacted by Ga. L. 1991, p. 924, § 3; Ga. L. 1992, p. 1790, § 5.)

The 1992 amendment, effective July 1, 1992, in paragraph (4), substituted a period for "; and" at the end of the first sentence and added the second sentence.

36-72-6. Identification and notification of descendants of person in cemetery sought to be developed.

The applicant shall implement its plan for identifying and locating descendants no later than the date the application is submitted to the governing authority. The governing authority shall review the applicant's plan for identifying and notifying the descendants of the deceased persons and may require as a condition for issuing a permit that the

applicant implement additional reasonable attempts to identify and locate descendants. Notice to possible descendants shall include information on how to contact the governing authority and a summary of the rights of descendants under this chapter. The governing authority shall promptly inform any descendant who indicates an interest in the disposition of the human remains and burial objects regarding any proposals for mitigation, the terms of any permit issued, the time and place of any scheduled public hearings, and appeal procedures and events. (Code 1981, § 36-72-6, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-7. Public hearing on development of abandoned cemetery; time for decision on application for permit.

(a) Within 15 days after it is satisfied that all reasonable effort has been made to notify descendants, as provided in Code Section 36-72-6, and following receipt of the recommendations of a board or commission created pursuant to Code Section 36-72-9, the governing authority shall schedule a public hearing at which any interested party or citizen may appear and be given an opportunity to be heard. In addition to the notice required in Code Section 36-72-6, notice of the public hearing shall be advertised in the legal organ of the jurisdiction once a week for the two consecutive weeks immediately preceding the week in which any such hearing is held.

(b) Within 30 days after the conclusion of the public hearing, the governing authority shall notify the applicant in writing of its decision. The governing authority shall have the authority to deny the application with written reasons therefor, to issue a permit adopting the application in whole or in part, or to issue a permit which may include additional requirements to mitigate the proposed activity's adverse effects on the cemetery or burial ground, including but not limited to relocation of the proposed project, reservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land, and respectful disinterment and proper disposition of the human remains. The governing authority may adopt the applicant's proposal for mitigation. (Code 1981, § 36-72-7, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-8. Issues considered in decision on application for permit.

The governing authority shall consider the following in making its determination:

- (1) The presumption in favor of leaving the cemetery or burial ground undisturbed;
- (2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;

- (3) The economic and other costs of mitigation;
- (4) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;
- (5) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment; and
- (6) Any other compelling factors which the governing authority deems relevant. (Code 1981, § 36-72-8, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-9. Establishment of board or commission to review applications in counties exceeding certain population size.

The governing authority of any county whose population is in excess of 290,000 as established by the United States decennial census of 1980 or any such future census shall be authorized to establish or empower a new or existing commission or board to hear and review any application filed pursuant to Code Section 36-72-5. The board or commission shall conduct a public hearing within 60 days of the filing of an application and shall make a written recommendation to the governing authority no later than 15 days following the public hearing with respect to the sufficiency of the notice to descendants, the plan for mitigation, the disturbance and adverse effects on the cemetery or burial ground, the success of the cemetery, and plans for disinterment and reinterment. (Code 1981, § 36-72-9, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-10. Application fee.

The governing authority shall be authorized to impose an application fee which shall reflect the cost to the governing authority for processing and reviewing the application including, but not limited to, the cost of hiring an attorney, independent archeologist, and independent surveyor to assist in making recommendations regarding the applicant's plan. Such fee, if imposed, shall not exceed \$2,500.00. (Code 1981, § 36-72-10, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-11. Appeal of decision on application for permit.

Should any applicant or descendant be dissatisfied with a decision of the governing authority, he or she, within 30 days of such decision, may file an appeal in the superior court of the county in which the cemetery or burial ground is located in addition to the superior courts enumerated in Code Section 50-13-19. (Code 1981, § 36-72-11, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-12. Development activities pending appeal.

Until the expiration of the time for appeal as set forth in Code Section 36-72-11, the applicant shall not begin or resume activities which comply with the permit issued by the governing authority. If an appeal is filed, the applicant may begin or resume activities which comply with the permit only upon consent of the governing authority and the party seeking judicial review or upon order of the reviewing court for good cause shown. (Code 1981, § 36-72-12, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-13. Inspection to ensure applicant's compliance.

The governing authority or local law enforcement agency shall inspect as necessary to determine whether the applicant has complied with the provisions of this chapter requiring cessation or limitation of activity and with the terms of the permit as issued by the governing authority or as modified by the superior court or reviewing court. (Code 1981, § 36-72-13, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-14. Jurisdiction of superior court; expending private or public funds to mitigate harm to cemetery.

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

(b) When activities of an agency, authority, or political subdivision of the state adversely affect an abandoned cemetery or a burial ground, such agency, authority, or political subdivision shall bear the cost of mitigating the harm to the abandoned cemetery or burial ground or reintering the human remains as a part of the cost of the project and is authorized to expend public funds for such purpose. When activities of a private person, corporation, or other private entity adversely affect an abandoned cemetery or a burial ground, such person, corporation, or other entity shall bear the cost of mitigating the harm to the cemetery or burial ground or reintering the human remains. The cost of mitigating the harm to an abandoned cemetery or to a burial ground or reintering the human remains exposed through vandalism by an unidentified vandal or through erosion may be borne by the governing authority in whose jurisdiction the abandoned cemetery or burial ground is located. (Code 1981, § 36-72-14, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-15. Disinterment and disposition of human remains or burial objects.

Any disinterment and disposition of human remains or burial objects permitted under this chapter shall be supervised, monitored, or carried out by the applicant's archeologist and shall be done at the expense of the person or entity to whom the permit is issued. (Code 1981, § 36-72-15, enacted by Ga. L. 1991, p. 924, § 3.)

36-72-16. Penalties.

Any person who knowingly fails to comply with the provisions of this chapter shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall pay a fine of not more than \$5,000.00 for each grave site disturbed; provided, however, that any person who knowingly violates the provisions of Code Section 36-72-4 shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction, shall be incarcerated for not more than six months and shall pay a fine not less than \$5,000.00 for each grave site disturbed. (Code 1981, § 36-72-16, enacted by Ga. L. 1991, p. 924, § 3.)

extended date. (Code 1981, § 36-70-25, enacted by Ga. L. 1997, p. 1567, § 1.)

36-70-26. Required filing; verification of components.

Each county shall file the agreement for the implementation of strategy required by Code Section 36-70-21 with the department. The department shall, within 30 days of receipt, verify that the strategy includes the components enumerated in Code Section 36-70-23 and the minimum criteria enumerated in Code Section 36-70-24. The department, however, shall neither approve nor disapprove the specific elements or outcomes of the strategy. (Code 1981, § 36-70-26, enacted by Ga. L. 1997, p. 1567, § 1.)

36-70-27. Limitation of funding for projects inconsistent with strategy.

(a) On and after July 1, 1999, no state administered financial assistance or grant, loan, or permit shall be issued to any local government or authority which is not included in a department verified strategy or for any project which is inconsistent with such strategy.

(b) (1) If a municipality containing fewer than 500 persons within the county fails to establish a process to resolve disputes as required by subparagraph (C) of paragraph (4) of Code Section 36-70-24, the sanctions specified in subsection (a) of this Code section shall not be imposed upon:

(A) The county within which any such municipality or portion of any such municipality is located; or

(B) Any other municipality located in such county.

(2) The provisions of this subsection shall apply only if a process to resolve disputes required by subparagraph (C) of paragraph (4) of Code Section 36-70-24 has been established between the county and each municipality containing 500 or more persons within the county.

(c) Any local government or authority which is subject to the sanctions specified in subsection (a) of this Code section shall become eligible for state administered financial assistance or grants, loans, or permits on the first day of the month following verification by the department that the requirements of Code Section 36-70-26 have been met. (Code 1981, § 36-70-27, enacted by Ga. L. 1997, p. 1567, § 1; Ga. L. 1999, p. 789, § 2.)

The 1999 amendment, effective April 28, 1999, designated the existing provisions as subsection (a), and added subsections (b) and (c).

36-70-28. Review and revision of strategy.

Each county and municipality shall review, and revise if necessary, the approved strategy:

(1) In conjunction with updates of the comprehensive plan as required by Article I of this chapter;

(2) Whenever necessary to change service delivery or revenue distribution arrangements; or

(3) In the event of the creation, abolition, or consolidation of local governments. (Code 1981, § 36-70-28, enacted by Ga. L. 1997, p. 1567, § 1.)

CHAPTER 72

ABANDONED CEMETERIES AND BURIAL GROUNDS

36-72-3. Authority of counties and municipalities to preserve abandoned cemeteries.

JUDICIAL DECISIONS

Duty of county. — This section authorizes but does not compel a county to preserve and protect abandoned cemeteries. *Smith v. Pulaski County*, 269 Ga. 688, 501 S.E.2d 213 (1998).

36-72-4. Permit required for developing land on which cemetery located.

JUDICIAL DECISIONS

Cited in *Smith v. Pulaski County*, 269 Ga. 688, 501 S.E.2d 213 (1998).

36-72-5. Application for permit.

JUDICIAL DECISIONS

Relocation allowed. — The court properly found that the evidence showed no specific dedication of this property by any of its owners for use as a public cemetery and that the evidence did not suggest that the cemetery was used by the public at large as a burial place which supported the granting of the application for relocation. *Hughes v. Cobb County*, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-6. Identification and notification of descendants of person in cemetery sought to be developed.

JUDICIAL DECISIONS

Cited in *Hughes v. Cobb County*, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-7. Public hearing on development of abandoned cemetery; time for decision on application for permit.

JUDICIAL DECISIONS

Consideration of alternatives. — Given that this section gives the governing authority the power to adopt the application in whole or in part, or to issue a permit which may include additional requirements, the board of commissioners had the authority to consider alternatives and to issue a permit for disinterment and relocation to the alternate site. *Hughes v. Cobb County*, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-8. Issues considered in decision on application for permit.

JUDICIAL DECISIONS

Evidence supported relocation. — There was evidence in the record which supported the trial court's conclusion of fact that, due to lack of maintenance and inappropriate surroundings, relocation would preserve rather than destroy the cultural heritage of the county and the cemetery. *Hughes v. Cobb County*, 264 Ga. 128, 441 S.E.2d 406 (1994).

36-72-11. Appeal of decision on application for permit.

JUDICIAL DECISIONS

Cited in *Hughes v. Cobb County*, 264 Ga. 128, 441 S.E.2d 406 (1994).

CHAPTER 73

CONTRACTS FOR REGIONAL FACILITIES

Sec.		Sec.	
36-73-1.	Purpose.	36-73-3.	Proposed facility located outside county or municipality; feasibility study.
36-73-2.	Public hearing on proposed contract; notice.		

Sec.
36-73-4. Impingement upon powers, authority, rights, and duties of sheriffs prohibited.

Effective date. — This chapter became April 18, 1995, but shall not invalidate any effective April 18, 1995, and applies with contract entered into prior to April 18, 1995. respect to contracts entered into on or after

36-73-1. Purpose.

It is the purpose of this chapter to provide certain conditions, limitations, and restrictions upon the exercise of the powers granted to counties and municipalities to enter into contracts for regional facilities under Article IX, Section IV, Paragraph IV of the Constitution. (Code 1981, § 36-73-1, enacted by Ga. L. 1995, p. 699, § 1.)

36-73-2. Public hearing on proposed contract; notice.

A county or municipality which proposes to enter into a contract under Article IX, Section IV, Paragraph IV of the Constitution shall, prior to entering into such contract, conduct at least one public hearing with respect to such proposed contract. Notice of such public hearing shall be given by a prominent advertisement in a newspaper of general circulation within the county or municipality. The parties proposing to enter into a contract may agree to conduct a joint public hearing in lieu of separate public hearings by each party. The notice of public hearing required in the case of a municipality may be combined with a notice of public hearing for the county within which the municipality is located. (Code 1981, § 36-73-2, enacted by Ga. L. 1995, p. 699, § 1.)

36-73-3. Proposed facility located outside county or municipality; feasibility study.

Where a county or municipality proposes to enter into a contract for a regional facility which will be located outside of such county or municipality and such contract will require the expenditure of public funds of the county or municipality, the county or municipality shall, prior to entering into the contract, conduct a financial feasibility study of the contract. Such study may be conducted by the county or municipality or the county or municipality may contract with another party for the conducting of the study. Two or more parties proposing to enter into a contract may conduct or contract for a joint financial feasibility study, but in this case the financial feasibility study shall separately address the fiscal concerns of each party to the proposed contract. A financial feasibility study shall at a minimum