

HOUSE BILL 877

N1, E1, C2

8lr0965

By: **Delegate Knotts**

Introduced and read first time: February 5, 2018

Assigned to: Health and Government Operations and Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Burial Sites – Access, Disinterment, Criminal Penalties, and Tax Credit**

3 FOR the purpose of requiring a person who brings a certain action for sale of a burial
4 ground to conduct a certain genealogical and historical search; authorizing a court
5 to reject the sale of a burial ground under certain circumstances; prohibiting a person
6 from desecrating human remains; authorizing the Office of Cemetery Oversight,
7 rather than a certain State's Attorney, to authorize the removal or relocation of
8 human remains under certain circumstances; authorizing the Office of Cemetery
9 Oversight, rather than a certain State's Attorney, to determine that a person has a
10 public interest in a burial site; requiring a person requesting authorization to remove
11 human remains to conduct a certain genealogical and historical study of the burial
12 site; establishing that a person who enters land for certain purposes is responsible
13 for ensuring that the person's conduct does not cause certain damage and that the
14 person is liable to the property owner for any damage caused as a result of the
15 person's access; requiring the owner of a certain burial site to consult with the
16 Director of the Maryland Historical Trust on certain issues; establishing that certain
17 advice provided by the Maryland Historical Trust is not binding on the owner;
18 authorizing a county or municipal corporation to require the owner of a certain burial
19 site to make arrangements for the repair or maintenance of the burial site under
20 certain circumstances; requiring a county or municipal corporation to provide a
21 certain notice to the owner of a certain burial site under certain circumstances;
22 establishing that a certain notice may be satisfied in a certain manner under certain
23 circumstances; authorizing a county or municipal corporation to maintain and
24 preserve a certain burial site under certain circumstances; authorizing a county or
25 municipal corporation to charge the owner of a burial site or impose a lien on a
26 certain property to cover the cost of certain repairs; authorizing the Mayor and City
27 Council of Baltimore City and the governing body of a county or municipal
28 corporation to provide a property tax credit against the county or municipal
29 corporation property tax imposed on certain improvements to real property related
30 to burial sites; defining certain terms; providing for the application of a certain
31 provision of this Act; and generally relating to burial sites.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, with amendments,
2 Article – Business Regulation
3 Section 5–505
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2017 Supplement)
- 6 BY repealing and reenacting, with amendments,
7 Article – Criminal Law
8 Section 10–401 and 10–402
9 Annotated Code of Maryland
10 (2012 Replacement Volume and 2017 Supplement)
- 11 BY repealing and reenacting, with amendments,
12 Article – Real Property
13 Section 14–121 and 14–122
14 Annotated Code of Maryland
15 (2015 Replacement Volume and 2017 Supplement)
- 16 BY adding to
17 Article – Real Property
18 Section 14–121.1
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2017 Supplement)
- 21 BY adding to
22 Article – Tax – Property
23 Section 9–261
24 Annotated Code of Maryland
25 (2012 Replacement Volume and 2017 Supplement)
- 26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
27 That the Laws of Maryland read as follows:
- 28 **Article – Business Regulation**
- 29 5–505.
- 30 (a) An action may be brought in accordance with the Maryland Rules and a court
31 may pass a judgment for sale of a burial ground for another purpose if:
- 32 (1) the ground has been dedicated and used for burial;
- 33 (2) burial lots have been sold in the burial ground and deeds executed or
34 certificates issued to buyers of the lots;
- 35 **(3) BASED ON A GENEALOGICAL AND HISTORICAL SEARCH FOR LOT**

1 OWNERS AND THEIR RELATIVES, ALL LOT OWNERS, THE LOT OWNERS' ASSIGNEES,
2 IF ANY, AND DESCENDANTS OF THE LOT OWNERS HAVE BEEN NOTIFIED OF THE SALE;

3 ~~[(3)]~~ (4) the ground has ceased to be used for burial; and

4 ~~[(4)]~~ (5) it is desirable to dispose of the burial ground for another purpose.

5 (b) If the court is satisfied that it is expedient or would be in the interest of the
6 parties to sell the burial ground, the court:

7 (1) may pass a judgment for the sale of the burial ground on the terms and
8 notice the court sets;

9 (2) shall order that as much of the proceeds of the sale as necessary be used
10 to pay the expenses of removing any human remains in the burial ground, buying burial
11 lots in another burial ground, and reburying the remains; and

12 (3) shall distribute the remaining proceeds of the sale among the parties
13 according to their interests.

14 (c) A judgment for the sale of a burial ground passes to the buyer of the burial
15 ground the title to the burial ground free of the claims of:

16 (1) the owners of the burial ground; and

17 (2) the holders of burial lots.

18 **(D) THE COURT MAY REJECT THE SALE OF A BURIAL GROUND IF:**

19 **(1) A PARTY LISTED IN SUBSECTION (A)(3) OF THIS SECTION OBJECTS**
20 **TO THE SALE; OR**

21 **(2) THE OFFICE OF CEMETERY OVERSIGHT HAS PROPOSED AN**
22 **ALTERNATIVE USE FOR THE PROPERTY, SUCH AS A PARK, AN OPEN SPACE, OR A**
23 **HISTORIC PROPERTY.**

24 Article – Criminal Law

25 10–401.

26 (a) In this subtitle the following words have the meanings indicated.

27 (b) (1) “Associated funerary object” means an item [of human manufacture or
28 use] that is intentionally placed:

29 (i) with human remains at the time of interment in a burial site; or

1 (ii) after interment, as a part of a death ceremony of a culture,
2 religion, or group.

3 (2) “Associated funerary object” includes a gravestone, monument, tomb,
4 or other structure in or directly associated with a burial site.

5 (c) (1) “Burial site” means a natural or prepared physical location, whether
6 originally located below, on, or above the surface of the earth, into which human remains
7 or associated funerary objects are deposited as a part of a death ceremony of a culture,
8 religion, or group.

9 (2) “Burial site” includes the human remains and associated funerary
10 objects that result from a shipwreck or accident and are left intentionally to remain at the
11 site.

12 **(D) “DESECRATE” MEANS TO VANDALIZE, DAMAGE, DIG UP, OR DESTROY**
13 **WITHOUT AUTHORIZATION UNDER § 10–402 OF THIS SUBTITLE.**

14 **(E) “DISINTERMENT AUTHORITY” MEANS:**

15 **(1) IN CRIMINAL MATTERS, THE STATE’S ATTORNEY FOR THE**
16 **COUNTY IN WHICH THE BURIAL SITE IS LOCATED; OR**

17 **(2) IN ALL OTHER CASES, THE OFFICE OF CEMETERY OVERSIGHT.**

18 **[(d)] (F)** “Permanent cemetery” means a cemetery that is owned by:

19 (1) a cemetery company regulated under Title 5 of the Business Regulation
20 Article;

21 (2) a nonprofit organization; or

22 (3) the State.

23 10–402.

24 (a) Except as provided in subsections (b) and (f) of this section, a person may not:

25 **(1) remove or attempt to remove human remains from a burial site; OR**

26 **(2) DESECRATE HUMAN REMAINS.**

27 (b) Subject to subsection (c) of this section, the [State’s Attorney for a county]
28 **DISINTERMENT AUTHORITY** may authorize in writing the removal of human remains
29 from a burial site in the [State’s Attorney’s] **DISINTERMENT AUTHORITY’S** jurisdiction:

1 (1) to ascertain the cause of death of the person whose remains are to be
2 removed;

3 (2) to determine whether the human remains were interred erroneously;

4 (3) for the purpose of reburial; or

5 (4) for medical or scientific examination or study allowed by law.

6 (c) (1) Except as provided in paragraph (4) of this subsection, the [State's
7 Attorney for a county] **DISINTERMENT AUTHORITY** shall require a person who requests
8 authorization to relocate permanently human remains from a burial site to publish a notice
9 of the proposed relocation in a newspaper of general circulation in the county where the
10 burial site is located.

11 (2) The notice shall be published in the newspaper one time.

12 (3) The notice shall contain:

13 (i) a statement that authorization from the [State's Attorney]
14 **DISINTERMENT AUTHORITY** is being requested to remove human remains from a burial
15 site;

16 (ii) the purpose for which the authorization is being requested;

17 (iii) the location of the burial site, including the tax map and parcel
18 number or liber and folio number; and

19 (iv) all known pertinent information concerning the burial site,
20 including the names of the persons whose human remains are interred in the burial site, if
21 known.

22 (4) (i) The [State's Attorney] **DISINTERMENT AUTHORITY** may
23 authorize the temporary relocation of human remains from a burial site for good cause,
24 notwithstanding the notice requirements of this subsection.

25 (ii) If the person requesting the authorization subsequently intends
26 to relocate the remains permanently, the person promptly shall publish notice as required
27 under this subsection.

28 (5) The person requesting the authorization from the [State's Attorney]
29 **DISINTERMENT AUTHORITY** shall pay the cost of publishing the notice.

30 (6) The [State's Attorney] **DISINTERMENT AUTHORITY** may authorize
31 the removal of the human remains from the burial site after:

1 (i) receiving proof of the publication required under paragraph (1)
2 of this subsection; and

3 (ii) 15 days after the date of publication.

4 (7) This subsection may not be construed to delay, prohibit, or otherwise
5 limit the [State's Attorney's] **DISINTERMENT AUTHORITY'S** authorization for the removal
6 of human remains from a burial site.

7 (8) For a known, but not necessarily documented, unmarked burial site,
8 the person requesting authorization for the removal of human remains from the burial site:

9 (I) has the burden of proving by archaeological excavation or
10 another acceptable method the precise location and boundaries of the burial site; **AND**

11 (II) **SHALL CONDUCT A GENEALOGICAL AND HISTORICAL STUDY**
12 **OF THE BURIAL SITE.**

13 (d) (1) Any human remains that are removed from a burial site under this
14 section shall be reinterred in:

15 (i) 1. a permanent cemetery that provides perpetual care; or

16 2. a place other than a permanent cemetery with the
17 agreement of a person in interest as defined under § 14-121(a)(4) of the Real Property
18 Article; and

19 (ii) in the presence of:

20 1. a mortician, professional cemeterian, or other individual
21 qualified in the interment of human remains;

22 2. a minister, priest, or other religious leader; or

23 3. a trained anthropologist or archaeologist.

24 (2) The location of the final disposition and treatment of human remains
25 that are removed from a burial site under this section shall be entered into the local burial
26 sites inventory or, if no local burial sites inventory exists, into a record or inventory deemed
27 appropriate by the [State's Attorney] **DISINTERMENT AUTHORITY** or the Maryland
28 Historical Trust.

29 (e) This section may not be construed to:

30 (1) preempt the need for a permit required by the Maryland Department of

1 Health under § 4–215 of the Health – General Article to remove human remains from a
2 burial site; or

3 (2) interfere with the normal operation and maintenance of a cemetery, as
4 long as the operation and maintenance of the cemetery are performed in accordance with
5 State law.

6 (f) (1) Subject to paragraphs (2) and (3) of this subsection, human remains or
7 the remains of a decedent after cremation, as defined in § 5–508 of the Health – General
8 Article, may be removed from a burial site within a permanent cemetery and reinterred in:

9 (i) the same burial site; or

10 (ii) another burial site within the boundary of the same permanent
11 cemetery.

12 (2) The following persons, in the order of priority stated, may arrange for
13 a reinterment of remains under paragraph (1) of this section:

14 (i) the surviving spouse or domestic partner of the decedent;

15 (ii) an adult child of the decedent;

16 (iii) a parent of the decedent;

17 (iv) an adult brother or sister of the decedent;

18 (v) a person acting as a representative of the decedent under a
19 signed authorization of the decedent; or

20 (vi) the guardian of the person of the decedent at the time of the
21 decedent's death, if one has been appointed.

22 (3) (i) The reinterment under paragraph (1) of this subsection may be
23 done without the need for obtaining the authorization of the [State's Attorney]
24 **DISINTERMENT AUTHORITY** under subsection (b) of this section or providing the notice
25 required under subsection (c) of this section.

26 (ii) 1. A person who arranges for the reinterment of remains
27 within a permanent cemetery under paragraph (1)(ii) of this subsection, within 30 days
28 after the reinterment, shall publish a notice of the reinterment in a newspaper of general
29 circulation in the county where the permanent cemetery is located.

30 2. The notice shall be published in the newspaper one time.

31 3. The notice shall contain:

- 1 A. a statement that the reinterment took place;
- 2 B. the reason for the reinterment;
- 3 C. the location of the burial site from which remains have
4 been removed, including the tax map and parcel number or liber and folio number;
- 5 D. the location of the burial site in which the remains have
6 been reinterred, including the tax map and parcel number or liber and folio number; and
- 7 E. all known pertinent information concerning the burial
8 sites, including the names of the persons whose cremated remains or human remains are
9 interred in the burial sites, if known.

10 (iii) Within 45 days after the reinterment, a person who arranges for
11 a reinterment of remains under paragraph (1)(ii) of this subsection shall provide a copy of
12 the notice required under this paragraph to the Office of Cemetery Oversight.

13 (4) The location of a reinterment of remains under paragraph (1) of this
14 subsection shall be entered into the inventory of the local burial sites or, if no inventory
15 exists, into a record or inventory deemed appropriate by the Maryland Historical Trust.

16 (g) A person who violates this section is guilty of a misdemeanor and on conviction
17 is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

18 (h) A person who violates this section is subject to § 5–106(b) of the Courts Article.

19 **Article – Real Property**

20 14–121.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) (i) “Burial site” means any natural or prepared physical location,
23 whether originally located below, on, or above the surface of the earth into which human
24 remains or associated funerary objects are deposited as a part of a death rite or ceremony
25 of any culture, religion, or group.

26 (ii) “Burial site” includes the human remains and associated
27 funerary objects that result from a shipwreck or accident and are intentionally left to
28 remain at the site.

29 (3) “Cultural affiliation” means a relationship of shared group identity that
30 can be reasonably traced historically between a present–day group, tribe, band, or clan and
31 an identifiable earlier group.

32 (4) “Person in interest” means a person who:

1 (i) Is related by blood or marriage to the person interred in a burial
2 site;

3 (ii) Is a domestic partner, as defined in § 1-101 of the Health –
4 General Article, of a person interred in a burial site;

5 (iii) Has a cultural affiliation with the person interred in a burial site;
6 or

7 (iv) Has an interest in a burial site that the [Office of the State’s
8 Attorney for the county where the burial site is located] **OFFICE OF CEMETERY**
9 **OVERSIGHT** recognizes is in the public interest after consultation with a local burial sites
10 advisory board or, if such a board does not exist, the Maryland Historical Trust.

11 (b) Any person in interest may request the owner of a burial site or of the land
12 encompassing a burial site that has been documented or recognized as a burial site by the
13 public or any person in interest to grant reasonable access to the burial site for the purpose
14 of restoring, maintaining, or viewing the burial site.

15 (c) (1) A person requesting access to a burial site under subsection (b) or (d) of
16 this section may execute an agreement with the owner of the burial site or of the land
17 encompassing the burial site using a form similar to the form below:

18 “Permission to Enter

19 I hereby grant the person named below permission to enter my property, subject to
20 the terms of the agreement, on the following dates:

21 Signed.....

22 (Landowner)

23 Agreement

24 In return for the privilege of entering on the private property for the purpose of
25 restoring, maintaining, or viewing the burial site or transporting human remains to the
26 burial site, I agree to adhere to every law, observe every safety precaution and practice,
27 take every precaution against fire, and assume all responsibility and liability for my person
28 and my property, while on the landowner’s property.

29 Signed”

30 (2) The owner of the burial site or of the land encompassing the burial site
31 [may] **SHALL** grant access to the burial site in accordance with the terms of the agreement
32 signed under paragraph (1) of this subsection.

1 (d) In addition to the provisions of subsection (b) of this section, if burials are still
2 taking place at a burial site, any person who is related by blood or marriage, heir, appointed
3 representative, or any other person in interest may request the owner of the land
4 encompassing the burial site to grant reasonable access to the burial site for the purpose of
5 transporting human remains to the burial site to inter the remains of a person for whose
6 burial the site is dedicated, if access has not been provided in a covenant or deed of record
7 describing the metes and bounds of the burial site.

8 (e) Except for willful or malicious acts or omissions, the owner of a burial site or
9 of the land encompassing a burial site who allows persons to enter or go on the land for the
10 purposes provided in subsections (b) and (d) of this section is not liable for damages in a
11 civil action to a person who enters on the land for injury to person or property.

12 **(F) A PERSON WHO ENTERS LAND FOR THE PURPOSES PROVIDED IN**
13 **SUBSECTIONS (B) AND (D) OF THIS SECTION SHALL BE RESPONSIBLE FOR ENSURING**
14 **THAT THE PERSON'S CONDUCT DOES NOT DAMAGE THE LAND, THE CEMETERY, OR**
15 **THE GRAVESITES, AND SHALL BE LIABLE TO THE PROPERTY OWNER FOR ANY**
16 **DAMAGE CAUSED AS A RESULT OF THE PERSON'S ACCESS.**

17 **[(f)] (G)** (1) An owner of a burial site, a person who is related by blood or
18 marriage to the person interred in a burial site, heir, appointed representative, or any other
19 person in interest, or any other person **[may] SHALL** report the location of a burial site to
20 the supervisor of assessments for a county, together with supporting documentation
21 concerning the location and nature of the burial site.

22 (2) The supervisor of assessments for a county **[may] SHALL** note the
23 presence of a burial site on a parcel on the county tax maps maintained under § 2–213 of
24 the Tax – Property Article.

25 **[(g)] (H)** Nothing in this section may be construed to interfere with the normal
26 operation and maintenance of a public or private cemetery being operated in accordance
27 with State law.

28 **14-121.1.**

29 **(A) IN THIS SECTION, "BURIAL SITE" HAS THE MEANING STATED IN §**
30 **14-121 OF THIS SUBTITLE.**

31 **(B) AN OWNER OF A BURIAL SITE OR OF THE LAND ENCOMPASSING A BURIAL**
32 **SITE THAT HAS BEEN IN EXISTENCE FOR MORE THAN 50 YEARS AND IN WHICH THE**
33 **MAJORITY OF THE PERSONS INTERRED IN THE BURIAL SITE HAVE BEEN INTERRED**
34 **FOR MORE THAN 50 YEARS SHALL CONSULT WITH THE DIRECTOR OF THE**
35 **MARYLAND HISTORICAL TRUST ABOUT THE PROPER TREATMENT OF MARKERS,**
36 **HUMAN REMAINS, AND THE ENVIRONMENT SURROUNDING THE BURIAL SITE.**

1 **(C) ADVICE PROVIDED BY THE MARYLAND HISTORICAL TRUST UNDER THIS**
2 **SECTION IS NOT BINDING ON THE OWNER OF THE BURIAL SITE.**

3 14–122.

4 (a) In this section, “burial site” means any natural or prepared physical location,
5 whether originally below, on, or above the surface of the earth into which human remains
6 are deposited as a part of a death rite or ceremony of any culture, religion, or group.

7 (b) **(1)** Any county or municipal corporation that has within its jurisdiction a
8 burial site in need of repair or maintenance [may, upon] **MAY:**

9 **(I)** **AT** the request of the owner or with permission of the owner of
10 the burial site in need of repair or maintenance, maintain and preserve the burial site for
11 the owner; **OR**

12 **(II)** **REQUIRE THE OWNER OF THE BURIAL SITE TO MAKE**
13 **ARRANGEMENTS FOR THE REPAIR OR MAINTENANCE OF THE BURIAL SITE, IN**
14 **ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.**

15 **(2) (I)** **A COUNTY OR MUNICIPAL CORPORATION THAT REQUIRES**
16 **THE OWNER OF A BURIAL SITE TO MAKE ARRANGEMENTS FOR THE REPAIR OR**
17 **MAINTENANCE OF THE BURIAL SITE SHALL SEND NOTICE TO THE OWNER STATING**
18 **THAT:**

19 **1. THE COUNTY OR MUNICIPAL CORPORATION HAS**
20 **DETERMINED THAT THE BURIAL SITE IS IN NEED OF REPAIR OR MAINTENANCE;**

21 **2. THE OWNER IS REQUIRED TO NOTIFY THE COUNTY OR**
22 **MUNICIPAL CORPORATION OF THE OWNER’S ARRANGEMENTS FOR THE REPAIR OR**
23 **MAINTENANCE OF THE BURIAL SITE; AND**

24 **3. IF THE OWNER DOES NOT RESPOND AFTER TWO**
25 **NOTICES, THE COUNTY OR MUNICIPAL CORPORATION MAY:**

26 **A. PERFORM THE REPAIR OR MAINTENANCE; AND**

27 **B. CHARGE THE OWNER OF THE BURIAL SITE OR IMPOSE**
28 **A LIEN ON THE PROPERTY TO COVER THE COST OF THE REPAIR OR MAINTENANCE.**

29 **(II)** **IF A BURIAL SITE IS ABANDONED OR THE OWNER OF A**
30 **BURIAL SITE IS UNKNOWN OR CANNOT BE LOCATED, THE NOTICE REQUIRED UNDER**
31 **SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY BE SATISFIED BY AFFIXING THE**
32 **NOTICE CONSPICUOUSLY ON THE PROPERTY.**

1 (c) In order to maintain and preserve a burial site or to repair or restore fences,
2 tombs, monuments, or other structures located in a burial site, a county or municipal
3 corporation may:

4 (1) Appropriate money and solicit donations from individuals or public or
5 private corporations;

6 (2) Provide incentives for charitable organizations or community groups to
7 donate their services; [and]

8 (3) Develop a community service program through which individuals
9 required to perform community service hours under a sentence of a court or students may
10 satisfy community service requirements or volunteer their services; AND

11 (4) **IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS SECTION,**
12 **CHARGE THE OWNER OF THE BURIAL SITE OR IMPOSE A LIEN ON THE PROPERTY TO**
13 **COVER THE COST OF THE REPAIRS.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
15 as follows:

16 **Article – Tax – Property**

17 **9–261.**

18 **THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY OR THE GOVERNING**
19 **BODY OF A COUNTY OR OF A MUNICIPAL CORPORATION MAY GRANT, BY LAW, A**
20 **PROPERTY TAX CREDIT AGAINST THE COUNTY OR MUNICIPAL CORPORATION**
21 **PROPERTY TAX IMPOSED ON AN IMPROVEMENT OF REAL PROPERTY THAT**
22 **SUBSTANTIATES, DEMARCATES, COMMEMORATES, OR CELEBRATES A BURIAL**
23 **GROUND.**

24 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be
25 applicable to all taxable years beginning after June 30, 2018.

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June
27 1, 2018.