

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Representative Bisbee

# A Bill

HOUSE BILL 1483

## For An Act To Be Entitled

"AN ACT TO PROVIDE FOR THE RECLAMATION AND SUBSEQUENT SALE  
OF ABANDONED CEMETERY LOTS; AND FOR OTHER PURPOSES."

### Subtitle

"TO PROVIDE FOR THE RECLAMATION AND  
SUBSEQUENT SALE OF ABANDONED CEMETERY  
LOTS"

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

SECTION 1. (a) As used in this act, "lot" means any lot, or portion of a lot, in a cemetery owned by a county or municipality, which has not been used for the interment of human remains and for which no provision for perpetual care was made at the time the lot was sold or at any time subsequent to the time the lot was sold.

(b) The governing body of any county or municipality or other officials having control over a cemetery may maintain in the circuit court in the county within which the cemetery is located a proceeding for the termination and forfeiture of the rights and interests of an owner of any lot or lots in the cemetery whenever the present owner of the lot is unknown to the governing body of the county or municipality or other officials and a period of at least seventy-five (75) years has passed since any portion of the lot has been used for interment purposes.

(c)(1) The proceeding shall be commenced by the filing of a verified petition with the clerk of the circuit court.

(2) The petition shall:

(A) Identify the lot or lots.

(B) State that the portion of the lot to be reclaimed has

1 not been used for the interment of human remains, and that a core or sound  
 2 test has been conducted to determine that the portion contains no remains.

3 (C) State that the present owner of the lot is unknown to  
 4 the governing body of the county or municipality or other officials having  
 5 control over the cemetery.

6 (D) State that a period of at least seventy-five (75)  
 7 years has passed since any portion of the lot was used for interment  
 8 purposes.

9 (E) Request that the court issue an order declaring the  
 10 lot abandoned and further declaring all of the rights and interests of the  
 11 owner terminated and forfeited.

12 (3) The petition shall be accompanied by an affidavit by the  
 13 governing body of the county or municipality or other officials that a  
 14 diligent search to locate the present owner of the lot has been made but that  
 15 the owner has not been located.

16 (d) Upon the filing of the petition and affidavit, the clerk of the  
 17 circuit court shall fix a time for a hearing on the petition not less than  
 18 thirty (30) days nor more than ninety (90) days after the date of the filing.

19 (e)(1) The governing body of the county or municipality or other  
 20 officials shall give notice of the hearing by posting copies of the notice in  
 21 three (3) conspicuous places in the cemetery which is owned or operated by  
 22 the governing body or other officials and by mailing a copy of the notice by  
 23 registered mail to the last known owner of the lot. A notice of the hearing  
 24 shall be published once each week for three (3) successive weeks in some  
 25 newspaper of general circulation in the county within which the cemetery is  
 26 located, the first publication being made not less than thirty (30) days  
 27 before the date of hearing.

28 (2) The notice shall identify the lot and shall state:

29 (A) The name and address of the last known owner of the  
 30 lot.

31 (B) That a hearing will be held to determine whether or  
 32 not the present owner of the lot shall have his right and interest terminated  
 33 and forfeited by a declaration of abandonment of the lot.

34 (C) The time and place of the hearing.

35 (f) In the event that upon the hearing the court determines from the

1 evidence presented that the present owner of the lot is unknown, that the  
 2 governing body or other officials have made a diligent search to locate the  
 3 present owner, that a period of seventy-five (75) years or more has passed  
 4 since any portion of the lot has been used for human interment, and that a  
 5 core or sound test has been conducted to determine that the lot contains no  
 6 remains, then a decree shall be entered adjudicating the lot, lots, or parts  
 7 thereof to have been abandoned, and further ordering the subsequent  
 8 termination and forfeiture of all rights and interest of the owner.

9 (g) The court shall dismiss the proceeding if it determines any of the  
 10 following from the evidence which is presented:

11 (1) That any of the material facts stated in the petition are  
 12 not true.

13 (2) The identity of the present owner of the lot is known.

14 (3) That the governing body or other official has not made a  
 15 diligent search to locate the present owner.

16 (h)(1) Upon order of the court declaring the lot to be abandoned, the  
 17 full title to the lot shall revert to the cemetery.

18 (2) The order of the court shall not become final until one (1)  
 19 year after the date on which it is entered. During that time, any person may  
 20 petition the court to reopen the proceeding and the court, after notice to  
 21 the governing body or other officials, may reopen the proceeding and may hear  
 22 and consider any additional evidence regarding the ownership of the lot, and  
 23 may modify or amend the order which it made or, if the court makes any of the  
 24 determinations mentioned by subsection (g), it shall dismiss the proceeding.

25 (i)(1) The governing body or other officials shall, within thirty (30)  
 26 days after the date on which the court order is entered, publish notice of  
 27 the order once in a newspaper of general circulation in the county in which  
 28 the cemetery is located and by mailing a copy of the order by registered mail  
 29 to the last known owner of the lot, or to the last known owner of the right  
 30 of interment in the lot.

31 (2) The notice which is mailed and published shall identify the  
 32 lot which is covered by the order and shall state:

33 (A) The name and address of the last known owner of the  
 34 lot.

35 (B) That the court has ordered that the lot is to be

1 declared abandoned and that the court has further ordered that the rights and  
 2 interests of the owner are to be subsequently terminated and forfeited.

3 (C) The date upon which the order of the court will become  
 4 final.

5 (j) The lot shall be deemed abandoned and the rights and interest of  
 6 the present owner shall be terminated and forfeited as of the date upon which  
 7 the order of the court becomes final. Thereafter, the cemetery shall be the  
 8 owner of the lot and may resell or otherwise recover it.

9 (k) The proceeds derived from any sale of a lot, ownership of which is  
 10 obtained as provided in this act, shall be used as follows:

11 (1) First, to reimburse the petitioner for the costs of suit and  
 12 necessary expenses, including attorney\_s fees, incurred by the petitioner in  
 13 the proceeding.

14 (2) Then, of the remainder of the proceeds:

15 (A) Not less than seventy-five percent (75%) shall be held  
 16 in trust and shall be used only for expenses of administration, maintenance,  
 17 restoration, preservation, and other improvements of the cemetery; and

18 (B) Any amounts remaining thereafter shall be used for  
 19 immediate improvements and maintenance of the cemetery.

20 (l) In no event shall any existing monument, retaining wall, fence,  
 21 bench, or other ornamentation be altered or removed by petitioner or his  
 22 agent or employee or by any subsequent owner of a lot reclaimed and sold as  
 23 provided herein.

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25 SECTION 2. All provisions of this act of a general and permanent  
 26 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
 27 Code Revision Commission shall incorporate the same in the Code.

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29 SECTION 3. If any provision of this act or the application thereof to  
 30 any person or circumstance is held invalid, such invalidity shall not affect  
 31 other provisions or applications of the act which can be given effect without  
 32 the invalid provision or application, and to this end the provisions of this  
 33 act are declared to be severable.

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35 SECTION 4. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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