

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 855

Introduced by Wallman, 30; Haar, 21.

Read first time January 13, 2014

Committee: General Affairs

A BILL

1 FOR AN ACT relating to cemeteries; to amend sections 12-501, 12-502,
2 12-512.01, 12-512.02, 12-512.04, 12-512.05, 12-516,
3 12-518, 12-808, 17-934, and 17-944, Reissue Revised
4 Statutes of Nebraska; to change provisions relating to
5 formation and operation of cemetery associations; to
6 provide for transfer of management and operation of
7 certain cemeteries; to harmonize provisions; to repeal
8 the original sections; and to declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. A cemetery association which takes over the
2 management and operation of a cemetery pursuant to section 12 of this
3 act shall, within one year after taking over, prepare a map of the
4 cemetery and make a good faith effort to identify the remains buried
5 in the cemetery according to the headstones and the owner of all
6 lots. The cemetery association shall file the map and identifying
7 information and a record of all business conducted by the cemetery
8 association in the prior calendar year at the time it files the audit
9 under section 12-512.04 with the county clerk.

10 Sec. 2. Any cemetery association shall provide for at
11 least one mowing annually of the cemetery it manages, and one of such
12 mowings shall occur within two weeks prior to Memorial Day.
13 Additional mowings shall be at the discretion of the cemetery
14 association.

15 Sec. 3. Section 12-501, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 12-501 (1) For purposes of sections 12-501 to 12-530 and
18 sections 1 and 2 of this act, cemetery association means an
19 association formed under such sections.

20 (2) Every cemetery, hereafter established, other than
21 those owned, operated, and maintained by the state, by towns,
22 villages, and cities, by churches, by public charitable corporations,
23 by cemetery districts, and by fraternal and benevolent societies,
24 shall be owned, conducted, and managed by cemetery associations
25 organized and incorporated as hereinafter provided in sections 12-501

1 to 12-530 and sections 1 and 2 of this act except as specifically
 2 provided in section 12-530 and section 12 of this act.

3 (3) The establishment of a cemetery by any agency other
 4 than those enumerated ~~herein~~ in this section shall constitute a
 5 nuisance, and its operation may be enjoined at the suit of any
 6 taxpayer in the state.

7 (4) It shall be lawful for any number of persons, not
 8 less than five, who are residents of the county in which they desire
 9 to form themselves into an association, to form themselves into a
 10 cemetery association, and to elect any number of their members, not
 11 less than three, to serve as trustees, and one member as clerk, who
 12 shall continue in office during the pleasure of the ~~society~~ all
 13 association. All such elections shall take place at a meeting of four
 14 or more members of such association by a majority vote of those
 15 present. ~~A~~ Provided, a notice for such meeting shall ~~have been~~ be
 16 published in a local newspaper, or posted in three places within the
 17 precinct or township in which the cemetery is or will be located, at
 18 least fifteen days prior to ~~said the~~ meeting.

19 Sec. 4. Section 12-502, Reissue Revised Statutes of
 20 Nebraska, is amended to read:

21 12-502 The clerk, ~~hereinbefore~~ authorized to be
 22 appointed, of the cemetery association shall ~~forthwith~~ make out a
 23 true record of the proceedings of the meeting provided for by section
 24 12-501, and certify and deliver the same to the clerk of the county
 25 in which such meeting ~~shall be~~ is held, together with the name by

1 which such association shall ~~desire to be known. The ; and it shall~~
2 ~~be the duty of each county clerk, in the state,~~ immediately upon the
3 receipt of such certified statement, ~~to~~ shall record the same in a
4 book ~~by him~~ provided by the county clerk for that purpose at the
5 expense of the county; and ~~the clerk~~ shall be entitled to the same
6 fees for ~~his~~ the services as ~~he~~ the county clerk is entitled to
7 demand for other similar services. After ; and from and after the
8 making of such record by the county clerk, the ~~said~~ trustees, and
9 ~~their~~ the associated members and successors, shall be invested with
10 the powers, privileges, and immunities incident to aggregate
11 corporations. A ; and a certified transcript of the record, ~~herein~~
12 ~~authorized to be made by the county clerk,~~ shall be deemed and taken
13 in all courts and places whatsoever within this state as prima facie
14 evidence of the existence of such cemetery association.

15 Sec. 5. Section 12-512.01, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 12-512.01 Every cemetery association ~~organized after~~
18 ~~September 14, 1953, under the provisions of Chapter 12, article 5,~~
19 shall provide for and select trustees, other than officers or members
20 of the association, who shall be selected, as provided for in section
21 12-512.03, to invest, safeguard, and look after certain funds of the
22 association, including the sums provided for by section 12-512.02 and
23 any other money acquired for the purposes of such fund, in a
24 perpetual care trust fund, the income therefrom to be used for the
25 perpetual care of the cemetery by the association.

1 Sec. 6. Section 12-512.02, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 12-512.02 (1) The cemetery association shall place at
4 least the following sums into the perpetual care trust fund: ~~(1)~~

5 (a) Monument plan cemeteries, fifty cents per square foot
6 of each cemetery lot sold; ~~(2) park~~

7 (b) Park plan or memorial plan cemeteries, twenty-five
8 cents per square foot of each cemetery lot sold; and ~~(3) combined~~

9 (c) Combined monument and park plan cemeteries, fifty
10 cents per square foot of each cemetery lot sold.

11 (2) Such funds shall be paid by the cemetery association
12 to the trustees of the perpetual care trust fund, who shall invest
13 the funds under the same conditions and restrictions as trust funds
14 are invested under ~~the provisions of section 30-3201. If ; Provided,~~
15 ~~that when~~ any lots are sold on contract, thirty percent of all
16 payments received on the contract shall be paid to the trustee or
17 trustees of the perpetual care trust fund until the entire payments
18 required by this section are made.

19 Sec. 7. Section 12-512.04, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 12-512.04 On June 30 of each year, the individual
22 trustees or corporate trustee, as the case may be, of such perpetual
23 care trust fund shall have an audit of the perpetual care trust fund
24 made by a certified public accountant and the report of such audit by
25 the auditor shall be filed within thirty days after June 30 of such

1 year with the county clerk of the county in which the cemetery is
2 located. The expense of the audit and the filing fee of the report
3 shall be paid by the cemetery association. The cemetery association
4 shall also file the documents required by section 1 of this act.

5 Sec. 8. Section 12-512.05, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 12-512.05 Every cemetery association ~~organized after~~
8 ~~September 18, 1955, under the provisions of Chapter 12, article 5,~~
9 shall, before selling or disposing of any interment space or lots,
10 establish a minimum perpetual care and maintenance guarantee fund of
11 not less than two thousand five hundred dollars in cash to be
12 administered by the trustee or trustees of the perpetual care trust
13 fund selected as provided in section 12-512.03.

14 Sec. 9. Section 12-516, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 12-516 ~~Whenever~~ If the trustees of any cemetery
17 association ~~organized under sections 12-501 to 12-505 shall receive~~
18 the gift of any property, real or personal, in their own name, in
19 trust, for the perpetual care of ~~said~~ the cemetery, or anything
20 connected therewith, ~~said~~ the trustees shall, upon the enactment of
21 bylaws to that effect by the association, give a bond to ~~said~~ the
22 association of at least one thousand dollars, conditioned for the
23 faithful administration of ~~said~~ the trust and care of ~~said~~ the funds
24 and property. ~~Said~~ The bond shall be filed with, and approved by the
25 county clerk of the county ~~wherein~~ in which ~~the~~ association is

1 located, and the clerk shall be paid the same fee for approving and
2 filing ~~said the~~ bond as ~~is now~~ fixed by law for approving and filing
3 official bonds. The cost of ~~said the~~ bond shall be paid by ~~said the~~
4 cemetery association.

5 Sec. 10. Section 12-518, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 12-518 ~~Such~~ A cemetery association shall cause a plat of
8 ~~its the~~ cemetery grounds, and of the lots ~~by it~~ laid out in the
9 cemetery, to be made and recorded, such lots to be numbered by
10 regular consecutive numbers. It shall have power to enclose, improve,
11 and adorn the grounds and avenues, and erect buildings for the use of
12 the association, ~~;~~ to prescribe rules for the enclosing and adorning
13 of lots, and for erecting monuments in the cemetery, ~~;~~ and to
14 prohibit any use, division, improvement, or adornment of a lot which
15 it may deem improper. An annual exhibit shall be made of the affairs
16 of the association.

17 Sec. 11. Section 12-808, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 12-808 For purposes of sections 12-807 to 12-810 and
20 section 12 of this act, an abandoned or neglected pioneer cemetery
21 shall be defined according to the following criteria:

22 (1) Such cemetery was founded or the land upon which such
23 cemetery is situated was given, granted, donated, sold, or deeded to
24 the founders of the cemetery prior to January 1, 1900;

25 (2) Such cemetery contains the grave or graves of a

1 person or persons who were homesteaders, immigrants from a foreign
2 nation, prairie farmers, pioneers, sodbusters, first generation
3 Nebraskans, or Civil War veterans; and

4 (3) Such cemetery has been generally abandoned or
5 neglected for a period of at least five consecutive years.

6 Sec. 12. A county which is maintaining an abandoned or
7 neglected pioneer cemetery may transfer the management of the
8 cemetery to a cemetery association formed under sections 12-501 to
9 12-530 and sections 1 and 2 of this act or to a cemetery district
10 organized under sections 12-909 to 12-923 if:

11 (1) The county has been maintaining the cemetery pursuant
12 to sections 12-807 to 12-810 for at least five years;

13 (2) The planning commission appointed pursuant to section
14 23-114.01, if any, reviews the proposed transfer; and

15 (3) The county board approves the transfer of the
16 cemetery by resolution after a public hearing for which notice is
17 provided to the public.

18 Sec. 13. Section 17-934, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 17-934 In any ~~such~~ city of the second class or village
21 ~~where in which~~ there exists a duly perfected cemetery association,
22 ~~formed under the provisions of sections 12-501 to 12-529, and in the~~
23 ~~further event that said~~ as defined in section 12-501, if the cemetery
24 ~~association, formed as aforesaid, shall propose~~ proposes to the mayor
25 and council of such city or to the ~~chairman~~ chairperson and board of

1 trustees of such village by means of a resolution duly enacted by
2 such cemetery association, signed by its president and attested by
3 its secretary, signifying the willingness of ~~said~~the cemetery
4 association to exercise control and management of any cemetery
5 belonging to such city or village, then ~~and in that event, said~~the
6 mayor and council, ~~or said chairman chairperson~~ and board of trustees
7 shall submit at the next regular municipal election the question of
8 the management and control over ~~said~~the cemetery under the
9 conveyance made by the proper authorities of such city or village. If
10 a majority of the votes cast at such election ~~shall~~are in favor of
11 the transfer of the management and control of the cemetery belonging
12 to such city or village to the ~~said~~ cemetery association, the
13 management and control of such cemetery shall be relinquished
14 forthwith by the proper authorities of such city or village to ~~said~~
15 the cemetery association. ~~Where~~If the real estate of the cemetery of
16 such city or village ~~shall have~~has been acquired by gift or devise,
17 the relinquishment of the management and control to ~~such~~the cemetery
18 association shall be subject to the conditions imposed by the donor;
19 and upon acceptance by the president and secretary of ~~such~~the
20 cemetery association, ~~said~~the conditions shall be binding upon ~~such~~
21 the cemetery association.

22 Sec. 14. Section 17-944, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 17-944 Whenever, in cities of the second class and
25 villages, one-fifth of the resident lot owners of any cemetery under

1 the control of such city or village shall so desire it, it shall be
2 lawful for such lot owners to associate themselves into and form a
3 cemetery association, as ~~provided by sections 12-501 to 12-529.~~
4 defined in section 12-501.

5 Sec. 15. Original sections 12-501, 12-502, 12-512.01,
6 12-512.02, 12-512.04, 12-512.05, 12-516, 12-518, 12-808, 17-934, and
7 17-944, Reissue Revised Statutes of Nebraska, are repealed.

8 Sec. 16. Since an emergency exists, this act takes effect
9 when passed and approved according to law.