

To Public Health Committee

H. B. Bill 5557 – neglected cemetery care and funds

From Ruth Shapleigh-Brown

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Points of concern via H.B. Bill 5557 regarding establishing a fund for the care of neglected cemeteries.

- 1) How will these monies be allocated?
- 2) Will Commissions, non-stock holding associations and Friends group be entitled to apply?
- 3) Laws already in existence should be enforced?
- 4) Before H.B. Bill 5557 goes forward we should update statutes already in place to reflect current issues and address this in a more consistent manner affect various statewide conditions.

Of the over 2,200 cemeteries we have within our state, how many of these come under the heading of “neglected” and in light of statutes which address “ancient burying grounds being those that are over 100 years in age”, how many since the date of that statute are now within that description?

In the past 20 plus years of being involved with burying ground history and preservation I’ve constantly seen our state statutes concerning cemetery maintenance being ignored and abused with no accountability or concern expressed at any legal level.

Why do we make laws if they cannot be followed?

If penalties are not enforced and/or if there is in fact “no authority” to respond to these cases, what’s the use?

Seeing the proposal of this H.B. Bill 5557 to establish funding to help our strapped municipalities provide respectable care of these older burying grounds and cemeteries is a good idea.

Our concern is to question how it will be administered and what will determine how these funds will be allocated?

Can one town with over 2 dozen small old cemeteries apply every year? Will it matter if the town happens to have a cemetery commission or not? Please keep in mind that the structure of municipal commissions is not equal or consistent what so ever. In one town it may be set up with funds and in another it is a volunteer position with little to no funds. This inconsistency needs to be addressed and needs attention first!

And how may the wording of this proposal confuse or complicate existing statute wording; which in turn gives us another statute that cannot be enforced.

Penalties of these statutes are to be enforced or brought to justice by whom?

A right to enter certain cemeteries to do this work or to prevent property destruction comes under the authority of WHO? I have often listened to cases where this question is tossed back and forth from the General Attorney's office to the State Archeologist without any resolve what so ever.

Examples:

One is in statute **Sec. 19a-308**. The 3 letter word "may" has been a point of contention in many cases where the municipality has been tasked to help care for these old places. And if they choose NOT care for the said cemetery to what is the recourse?

Sec. 19a-308. Care of neglected cemeteries. In any town in which there is a burial ground or cemetery containing more than six places of interment and not under the control or management of any currently functioning cemetery association, which has been neglected and allowed to grow up to weeds, briars and bushes, or about which the fences have become broken, decayed or dilapidated, the selectmen of such town may annually cause such burial ground to be cleared of weeds, briars and bushes, and may cause its fences or walls to be repaired and kept in orderly and decent condition and its memorial stones to be straightened.

On the flip side in recent years some municipalities have stepped up to seek legal wording to assist them in acquiring legal responsibility for these abandoned cemeteries so that they could take care of them.

Sec. 19a-308a. Abandoned cemeteries. Acquisition by municipality. Notice requirements. Objections. Vesting of title with municipality. **(a)** As used in this section, "abandoned cemetery" means a cemetery...

(f) If title to an abandoned cemetery vests with a municipality pursuant to subsection (e) of this section, such municipality shall maintain title to such cemetery, shall not transfer title to such cemetery, and shall maintain the characteristics of such cemetery and make no changes in the use of such cemetery land. The municipality may appoint a superintendent or sexton for such cemetery pursuant to section 19a-297, and may appropriate funds as necessary for the care, maintenance and support of such cemetery.

The following statute seems to only be useful when someone brings a person or organization to court for misuse of funds or embezzlement. **Sec. 19a-301. Establishment and management of perpetual funds. Accounting...**

...The treasurer shall annually, on or before July first, make a report to such society or association, stating the income received, to whom it has been paid, the amount and condition of the fund and how it is invested. A copy of such report shall be filed with the probate court for the district within which the cemetery owned or controlled by the society or association is located. Any treasurer who fails to file such report with the probate court shall be fined not more than fifty dollars.

Would these fifty dollar fines (if collected) be something that could be contributed to this new fund if only the law was enforced?

Following is a review of statutes presently in place that are mentioned in above testimony and those that would also bare some review before this H.B. Bill 5557 is put into process.

Thank You

Ruth Shapleigh-Brown

Executive Director of Connecticut Gravestone Network

For your convenience.

Sec. 19a-308. (Formerly Sec. 19-159). Care of neglected cemeteries. In any town in which there is a burial ground or cemetery containing more than six places of interment and not under the control or management of any currently functioning cemetery association, which has been neglected and allowed to grow up to weeds, briars and bushes, or about which the fences have become broken, decayed or dilapidated, the selectmen of such town may annually cause such burial ground to be cleared of weeds, briars and bushes, and may cause its fences or walls to be repaired and kept in orderly and decent condition and its memorial stones to be straightened

Sec. 19a-315. “Ancient burial place”, “burial ground authority” and “grave marker” defined. For purposes of sections 19a-315 to 19a-315c, inclusive:

(1) “Ancient burial place” means any tract of land within any municipality which has been used or has been in existence as a burial ground for more than one hundred years;

(2) “Burial ground authority” means the town, ecclesiastical society or cemetery association, as the case may be; and

(3) “Grave marker” means any of the following when used to mark graves in an ancient burial place, cemetery or burial ground: Tombs, monuments, gravestones, or fragments thereof and fences or curbing which enclose individual or family burial plots.

Sec. 19a-315a. Use of ancient burial place. No municipality shall alienate or appropriate any ancient burial place to any use other than that of a burial ground. No portion of any ancient burial place shall be taken for public use without the approval of the General Assembly. If any ancient burial place is appropriated for any other use and the bodies buried therein or the grave markers marking the same are removed, the burial ground authority shall preserve a record of such removal indicating the date of such removal and the site or place to which such removal was made.

Sec. 19a-308a. Abandoned cemeteries. Acquisition by municipality. Notice requirements. Objections. Vesting of title with municipality. (a) As used in this section, “abandoned cemetery” means a cemetery...

(f) If title to an abandoned cemetery vests with a municipality pursuant to subsection (e) of this section, such municipality shall maintain title to such cemetery, shall not transfer title to such cemetery, and shall maintain the characteristics of such cemetery and make no changes in the use of such cemetery land. The municipality

may appoint a superintendent or sexton for such cemetery pursuant to section 19a-297, and may appropriate funds as necessary for the care, maintenance and support of such cemetery.

Sec. 19a-296. (Formerly Sec. 19-147). Cemetery associations. (a) Cemetery associations shall be organized in accordance with the provisions of sections 33-1025 to 33-1047, inclusive, and shall not be conducted for the purposes of speculation in cemetery lots and property, or for private gain, either directly or indirectly, to any of the members of any such association; and land for the enlargement of a cemetery may be taken in accordance with the provisions of section 48-18.

Sec. 19a-297. (Formerly Sec. 19-148). Bylaws. Sexton. The selectmen of towns, cemetery associations or ecclesiastical societies, having the care of cemeteries, may (1) enact bylaws providing for the care and management of all burial lots, and the protection of all shrubs, trees, fences and monuments thereon, provided no such bylaws shall (A) require or result in the removal or banishing of any undamaged United States flag or armed forces service marker, including flagholders provided by veterans organizations, from any grave site, or (B) restrict the placement of United States flags on the graves of veterans from the Saturday before Memorial Day in each year until the Monday after the fourth of July, and (2) appoint superintendents and sextons for such cemeteries. Such superintendents and sextons shall have the exclusive right to direct the opening of graves, and no grave shall be opened in any cemetery except with the consent of the superintendent or sexton. Any person to whom such bylaws have been made known who violates the same shall be fined not more than ten dollars. The incorporators, organizers or members of any cemetery association or, if no incorporators, organizers or members are living, the owners of burial lots therein, by a majority vote, may, at any meeting called for that purpose, amend its articles of association or its bylaws.

Sec. 19a-298. (Formerly Sec. 19-149). Cemetery associations with capital stock organized prior to 1855. Cemetery associations having capital stock and organized under the general law as to incorporating burial societies prior to 1855 may, when the principal and interest of the subscriptions for capital stock have been repaid and no dividends have been paid for sixty-five years, amend the articles of association by a majority vote of the stock present and voting at a special meeting of such association called for the purpose.

Sec. 19a-299. (Formerly Sec. 19-150). Trust funds for care of cemeteries. Towns, ecclesiastical societies and cemetery associations may receive and hold in trust donations, the income of which is to be used wholly or in part for the care or improvement of their cemeteries and burial lots or of private lots within such cemeteries or elsewhere. All such donations shall be invested as by law required for the investment of trust funds, except when otherwise authorized by the donors. The principal of two or more such trust funds may be combined and merged in a single fund for the purpose of the investment of the same.

Sec. 19a-300. (Formerly Sec. 19-151). Funds for care of cemetery lots. Money declared by an instrument in writing to be intended for the perpetual care, maintenance, improvement or embellishment of any cemetery in this state, or of any lot or plot therein, to an amount not less than one hundred dollars, may be deposited with the State Treasurer who shall, in the name of the state, receive and receipt therefor. Each depositor shall, at the time of making such deposit, file with the State Treasurer and with the Secretary of the State a copy of such instrument. The State Treasurer shall invest the money deposited with the State Treasurer under the provisions of this section, in the name of the state, in bonds or other obligations of the state or other securities in which the State Treasurer is authorized to invest money on behalf of the state; and, on the first days of February and August annually, the State Treasurer shall pay over the accrued interest thereof to the treasurer of the town in which the cemetery is located, and the same shall be expended in the same manner as the income of funds donated to towns under the provisions of section 19a-304. At the time of paying such interest the State

Treasurer shall inform the person to whom it is paid of the purpose to which it is to be applied, as stated in the copy of such instrument, and such person shall thereupon apply it to such purpose.

Sec. 19a-301. (Formerly Sec. 19-152). Establishment and management of perpetual funds. Accounting. (a) Any cemetery association, organized as provided by law, may, by vote of the directors or members of such association, set aside the surplus funds of such association as a perpetual fund. Such fund shall be invested in accordance with the provisions of the statutes concerning the investment of trust funds. Such fund, together with any donation received by an ecclesiastical society or cemetery association pursuant to section 19a-303, shall be under the control, management and supervision of a committee of not fewer than three persons elected by such association or society. Such ecclesiastical society or cemetery association shall meet at least once annually. The treasurer of such society or association shall be, ex officio, the treasurer of such committee, and shall give bond, with surety, to the satisfaction of such committee, for the faithful discharge of his duties. He shall expend the income from such fund or donation for the management, care and maintenance of any cemetery owned or controlled by such ecclesiastical society or cemetery association, or for the purpose set forth in the instrument or declaration of trust regulating the use of such donation or fund if such instrument or declaration of trust should otherwise provide, at the times and in the manner designated by such society or association. The treasurer shall annually, on or before July first, make a report to such society or association, stating the income received, to whom it has been paid, the amount and condition of the fund and how it is invested. A copy of such report shall be filed with the probate court for the district within which the cemetery owned or controlled by the society or association is located. Any treasurer who fails to file such report with the probate court shall be fined not more than fifty dollars.

Sec. 19a-302. (Formerly Sec. 19-153). Takeover of fund. Appointment of cemetery committee. If at any time such association fails to comply with the provisions of section 19a-301, the selectmen of the town in which such cemetery is located shall take over the care of such fund and file an annual report with the Probate Court in accordance with the provisions of section 19a-301. The selectmen may appoint a cemetery committee consisting of not fewer than three or more than seven members who are residents of such town. If three members are appointed, one shall serve for a term of two years, one for a term of four years and one for a term of six years; if four members are appointed, one shall serve for a term of two years, one for a term of four years and two for a term of six years; if five members are appointed, one shall serve for a term of two years, two for a term of four years and two for a term of six years; if six members are appointed, two shall serve for a term of two years, two for a term of four years and two for a term of six years; and if seven members are appointed, two shall serve for a term of two years, two for a term of four years and three for a term of six years. Biennially thereafter, they may appoint one member for a term of six years to replace each member whose term expires. Such committee shall have all of the powers and duties of a committee established as provided in section 19a-301.

Sec. 19a-305. (Formerly Sec. 19-156). Probate Court may make allowance for care of lot. The Court of Probate may allow, out of the estate of a deceased person in settlement before such court, such amount as it deems necessary for the perpetual care, or for care for such time as it determines, of the cemetery lot wherein the deceased is interred.

Sec. 19a-307. (Formerly Sec. 19-158). Sale of abandoned or unused lots. Any town or any mutual nonstock cemetery association or corporation having charges legally assessed against any lot in the cemetery under its control or any holder of any such lot which have been due and unpaid for at least ten years shall be authorized to sell the unused portion of such lot in such manner...

History: 1971 act allowed towns, acting through their legislative bodies, to sell abandoned or unused lots in cemeteries under their control; Sec. 19-158 transferred to Sec. 19a-307 in 1983.

See Sec. 19a-314 re penalty for violation of this section.

Sec. 19a-315c. Maintenance of burial places. (a) Notwithstanding the provisions of section 19a-315b, a burial ground authority shall have the right to properly maintain an ancient burial place, cemetery or burial place, which right shall include: (1) Repair, rehabilitation, repositioning or resetting of grave markers in accordance with the rules and regulations of the burial ground authority; and (2) the renovation of the ancient burial place, cemetery or burial place as a whole.

(b) For purposes of subsection (a), no renovation of an ancient burial place, cemetery or burial place as a whole may be commenced until after: (1) The burial ground authority has conspicuously posted within the ancient burial place, cemetery or burial place, for a period of not less than ninety days, a notice that such renovation shall take place; and (2) the burial ground authority, at least ninety days before commencing a renovation, has provided written notice to the probate court having jurisdiction over the location of the burial place and to the Department of Economic and Community Development. Such notice to the probate court shall describe the renovation plans and include photographs of any area or grave marker involved.

(c) Following the notice period provided for in subsection (b) of this section, and subject to the provisions of subsection (d) of this section, a burial ground authority may renovate an ancient burial place, cemetery or burial place by: (1) The removal of any or all fencing, railing or curbing, if such removal is determined by the burial ground authority to be necessary or desirable for the proper and efficient maintenance of the ancient burial place, cemetery or burial place as a whole; and (2) the repositioning or resetting of any monument or tombstone.

(d) At any time prior to the expiration of the notice period provided for in subsection (b) of this section, the probate court may assume jurisdiction over such renovation and order a hearing, with notice of such hearing to be given to the burial ground authority, the owner, the qualified lineal descendant, the Department of Economic and Community Development and otherwise as the court deems appropriate, to determine whether such renovation is necessary for the proper and efficient maintenance of the ancient burial place, cemetery or burial place as a whole. Upon notice of such hearing, the burial ground authority shall not proceed with such renovation except in accordance with the order of the probate court.

Sec. 19a-295. (Formerly Sec. 19-146). Ownership and management of burial grounds. Town appropriations. Towns and ecclesiastical societies may procure and hold lands for burial grounds and provide a hearse and pall for the burial of the dead. Cemeteries may be acquired, owned and managed and controlled by such towns and ecclesiastical societies, and by cemetery associations heretofore incorporated or incorporated as provided in section 19a-296, and by no other persons, firms or corporations. Any town may appropriate annually such sum as may be necessary to maintain and properly care for public cemeteries and public burying grounds owned or controlled by such town, and any town may appropriate annually such sums as may be necessary to aid in the maintenance and care of public cemeteries and public burying grounds owned or controlled by ecclesiastical societies or cemetery associations.