

House Bill 2516

Sponsored by Representative GOMBERG (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows State Parks and Recreation Department to issue permits to entities to restore, maintain and preserve abandoned cemeteries. Allows department to adopt rules relating to issuance of permits.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to abandoned cemeteries; creating new provisions; amending ORS 226.520 and 226.540; and
3 declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS 226.510**
6 **to 226.630.**

7 **SECTION 2. (1) The State Parks and Recreation Department may issue a permit to an**
8 **entity to restore, maintain and preserve an abandoned cemetery.**

9 (2) An entity issued a permit under this section may:

10 (a) Restore, maintain and preserve the grounds of the abandoned cemetery;

11 (b) Take custody, for the time during which the entity holds a valid permit, of documents
12 relating to the abandoned cemetery for the purpose of restoration and preservation of those
13 documents; and

14 (c) Establish a fund to collect donations for the restoration, maintenance and preserva-
15 tion of the abandoned cemetery.

16 (3) A permit issued under this section does not authorize the permit holder to inter re-
17 mains in the abandoned cemetery.

18 (4) An entity that holds a permit issued under this section is not liable:

19 (a) For reasonable alterations made during restoration to memorials, roadways, walk-
20 ways, plantings or other details or features of the abandoned cemetery.

21 (b) To a person who claims burial rights, ancestral ownership or an unrecorded claim to
22 the abandoned cemetery.

23 (c) In contract or tort for personal injury, death or property damage that arises out of
24 the use of the abandoned cemetery if the principal purpose for the use is for maintenance
25 or visitation of the abandoned cemetery, or for similar activities. This paragraph does not
26 limit the liability of an entity for intentional injury or damage.

27 (5) The department shall revoke a permit issued under this section if the entity dissolves
28 or otherwise ceases to exist.

29 **SECTION 3. The State Parks and Recreation Department may adopt rules to carry out**
30 **the provisions of section 2 of this 2017 Act, including but not limited to:**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 (1) **Establishment of a permit application and issuance process;**

2 (2) **Criteria to determine whether an entity is qualified to restore, maintain and preserve**
3 **an abandoned cemetery;**

4 (3) **A process through which the department may communicate with a municipal corpo-**
5 **ration regarding a permit issued to restore, maintain and preserve an abandoned cemetery**
6 **located within the boundaries of the municipal corporation;**

7 (4) **A method to determine whether an entity is dissolved or otherwise ceases to exist;**
8 **and**

9 (5) **Other rules necessary to carry out the provisions of section 2 of this 2017 Act.**

10 **SECTION 4.** ORS 226.520 is amended to read:

11 226.520. As used in ORS 226.510 to 226.630:

12 (1) "Abandoned cemetery" means *[any]* a cemetery in which *[no]* remains *[of deceased persons]*
13 have **not** been interred *[for a period of]* **in the last** five years*[,] and:*

14 (a) **That does not have a known owner;**

15 (b) **For which the last known owner is deceased and the title was not conveyed; or**

16 (c) **That was owned by an entity that no longer exists and that did not convey title.**

17 (2) "Cemetery" means *[any]* a tract of land set apart by deed, will or otherwise, for a burial
18 ground, or for the purpose of interring *[the]* remains *[of deceased persons]*.

19 (3) "Diligent search" means a search *[as shall be]* reasonably calculated to discover:

20 (a) Graves from the existence of monuments, contour of land and terrain, fencing, curbing and
21 other evidences of the location of graves; and

22 (b) The location of *[human]* remains and *[the determination as to]* whether or not a given plot
23 contains *[such]* remains, for which it shall be sufficient to employ the method commonly known as
24 probing.

25 (4) "Municipal corporation" means the governing body of *[any]* a city incorporated under the
26 laws of this state.

27 (5) "Remains" means the remains of *[any]* a deceased person.

28 (6) "Suitable location" means *[any]* a cemetery, now in existence or hereafter established, in-
29 cluding a portion of *[any]* a cemetery subject to the provisions of ORS 226.510 to 226.630, where
30 provision is made for the perpetual care and upkeep of the graves.

31 **SECTION 5.** ORS 226.540 is amended to read:

32 226.540. *[The governing body of any municipal corporation that has within its boundaries a ceme-*
33 *tery that has been abandoned, or that has deteriorated and become neglected, and so located as to en-*
34 *danger the health, welfare, comfort or safety of the public, may upon petition signed by not less than*
35 *10 percent of the electors of the municipal corporation, and filed with the recorder, or similar officer*
36 *thereof, set a date for public hearing, and give notice thereof by publication, once a week for two suc-*
37 *cessive weeks, prior to the hearing, in a newspaper having general circulation within the county in*
38 *which the municipal corporation is located, said public hearing to be had within 60 days after the filing*
39 *of such petition.]*

40 (1) **The governing body of a municipal corporation may hold a public hearing regarding**
41 **an abandoned cemetery, or deteriorated and neglected cemetery, that is within the bounda-**
42 **ries of the municipal corporation if:**

43 (a) **The cemetery could, because of its location, endanger the health, welfare, comfort**
44 **or safety of the public;**

45 (b) **The municipal corporation verifies that the State Parks and Recreation Department:**

1 (A) Has not issued a permit to an entity under section 2 of this 2017 Act; and

2 (B) No application for a permit under section 2 of this 2017 Act is pending with the de-
3 partment;

4 (c) At least 10 percent of the electors of the municipal corporation sign and file a petition
5 for a hearing; and

6 (d) The municipal corporation publishes notice of the date of the hearing once per week
7 for two weeks prior to the hearing in a newspaper that is generally circulated in the county
8 where the municipal corporation is located.

9 (2) The governing body of the municipal corporation shall hold the hearing within 60 days
10 after the date on which a petition described in subsection (1) of this section is filed.

11 **SECTION 6.** (1) Sections 2 and 3 of this 2017 Act and the amendments to ORS 226.520 and
12 226.540 by sections 4 and 5 of this 2017 Act become operative on January 1, 2018.

13 (2) The State Parks and Recreation Department may take any action before the operative
14 date specified in subsection (1) of this section that is necessary to enable the department to
15 exercise, on or after the operative date specified in subsection (1) of this section, all of the
16 duties, functions and powers conferred on the department by sections 2 and 3 of this 2017
17 Act and the amendments to ORS 226.520 and 226.540 by sections 4 and 5 of this 2017 Act.

18 **SECTION 7.** This 2017 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
20 on its passage.

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