

# ACT No. 707

HOUSE BILL NO. 527

BY REPRESENTATIVES SAM JONES, ARMES, ARNOLD, BALDONE, BARROW, BILLIOT, TIM BURNS, BURRELL, CARMODY, CARTER, DIXON, DOERGE, EDWARDS, GISCLAIR, GUILLORY, GUINN, HARDY, HILL, MICHAEL JACKSON, LABRUZZO, LAFONTA, MCVEA, MILLS, MONTOUCET, NOWLIN, RICHARD, GARY SMITH, JANE SMITH, ST. GERMAIN, THIERRY, AND WOOTON

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AN ACT

To enact Chapter 21-B of Title 25 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 25:931 through 943, and R.S. 36:209(Q), relative to cemeteries in the state of Louisiana; to establish the Louisiana Historic Cemetery Preservation Program within the Department of Culture, Recreation and Tourism, office of cultural development, division of archaeology; to provide for program requirements and exemptions; to provide for unlawful acts and penalties for violations; to authorize the department to institute civil proceedings for violations of program requirements; to create the Louisiana Historic Cemetery Trust Fund in the state treasury and to provide for the use of the proceeds thereof; to create an advisory board to oversee the fund; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 21-B of Title 25 of the Louisiana Revised Statutes of 1950, comprised of R.S. 25:931 through 943, is hereby enacted to read as follows:

CHAPTER 21-B. LOUISIANA HISTORIC CEMETERY

PRESERVATION ACT

§931. Short title

This Chapter shall be known as the "Louisiana Historic Cemetery Preservation Act".

1            §932. Legislative declaration of intent

2                    The legislature hereby finds the demolition, destruction, and damage of  
3                    historic cemeteries and isolated graves a disrespectful practice. The legislature  
4                    further finds that existing state laws do not provide for the adequate protection of  
5                    historic cemeteries that are not under the jurisdiction of the Louisiana Cemetery  
6                    Board, are not on state lands, and are not solely comprised of unmarked graves.  
7                    Cemeteries are considered by most cultures to be sacred spaces. In addition to being  
8                    resting places for our dead, many of Louisiana's cemeteries are repositories of  
9                    significant examples of art, architecture, and archaeology as well as containing the  
10                   history of their respective communities. The importance of cemeteries should not  
11                   be taken lightly, as these significant elements represent a substantial tourist attraction  
12                   for the state of Louisiana, and also present an endless source of data for historians,  
13                   taphologists, anthropologists, archaeologists, and genealogists that collectively lead  
14                   us to a better understanding of our own culture.

15            §933. Definitions

16                    The following words and phrases when used in this Chapter shall have the  
17                    meanings given to them in this Section unless the context clearly indicates otherwise:

18                    (1) "Abandoned cemetery" shall mean any cemetery which is no longer being  
19                    used for interments, is not being maintained in good condition, and has fallen into  
20                    a state of disrepair, including tombs and headstones that have collapsed or been  
21                    destroyed, walls and fences that have fallen apart, and trees and bushes that have  
22                    grown amongst and within grave spaces.

23                    (2) "Advisory board" shall mean the advisory board for the Louisiana  
24                    Historic Cemetery Trust Fund.

25                    (3) "Artifact" shall mean any item of human manufacture or use that is  
26                    associated with a historic cemetery or isolated grave.

27                    (4) "Board" shall mean the Louisiana Cemetery Board.

28                    (5) "Damage" shall mean the intentional or inadvertent hurt, harm, or injury  
29                    to a component of a historic cemetery or to an isolated grave so as to lessen or  
30                    destroy its historic, cultural, or scientific value.

1                   (6) "Department" shall mean the Department of Culture, Recreation and  
2                   Tourism.

3                   (7) "Destruction" shall mean intentionally or inadvertently destroying  
4                   components of a historic cemetery by violent disintegration of its fabric so as to  
5                   reduce the components to ruin.

6                   (8) "Division" shall mean the office of cultural development, division of  
7                   archaeology, within the department.

8                   (9) "Fund" shall mean the Louisiana Historic Cemetery Trust Fund.

9                   (10) "Grave space" shall mean a grave, crypt, vault, niche, tomb, lawn crypt,  
10                  or any other property used or intended to be used for the interment of human  
11                  remains. The term shall also include any marker or other means of commemoration  
12                  associated with the grave space.

13                  (11) "Historic cemetery" shall mean any abandoned cemetery located in the  
14                  state that is more than fifty years old and is not subject to the laws, rules, and  
15                  regulations of the board or Chapter 10-A of Title 8 of the Louisiana Revised Statutes  
16                  of 1950.

17                  (12) "Human skeletal remains" shall mean any part of the body of a deceased  
18                  human being in any stage of decomposition.

19                  (13) "Isolated grave" shall mean any marked grave site that is not part of a  
20                  larger cemetery and is not subject to the laws, rules, and regulations of the board or  
21                  Chapter 10-A of Title 8 of the Louisiana Revised Statutes of 1950. The term shall  
22                  also include groupings of multiple graves that are not part of a larger cemetery.

23                  (14) "Modification" shall mean the altering of the original substance of a  
24                  grave space.

25                  (15) "Program" shall mean the Louisiana Historic Cemetery Preservation  
26                  Program.

27                  (16) "Unmarked burial site" shall have the same meaning as provided in R.S.  
28                  8:673.

1           §934. Louisiana Historic Cemetery Preservation Program

2                   A. The Louisiana Historic Cemetery Preservation Program is hereby  
 3           established within the Department of Culture, Recreation and Tourism. The program  
 4           shall be established and maintained in the office of cultural development, division  
 5           of archaeology. All budgeting, purchasing, and management functions shall be  
 6           administered by the department.

7                   B. The department may employ and remove personnel as may be necessary  
 8           for the efficient administration of the program in accordance with applicable civil  
 9           service law, rules, and regulations, and department policies.

10           §935. Powers and duties of the department

11                   The department shall have the following powers and duties with respect to  
 12           the program:

13                   (1) To implement and enforce the provisions of this Chapter.

14                   (2) To adopt such rules and regulations as are necessary to implement and  
 15           to enforce the provisions of this Chapter. All rules and regulations shall be adopted  
 16           in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

17                   (3) To consult with all interested parties on occasions of planned or  
 18           inadvertent destruction, damage, or modification of grave spaces within historic  
 19           cemeteries or of isolated graves and to determine a proper course of action.

20                   (4) To institute civil proceedings seeking injunctive or other relief to restrain  
 21           and to prevent violations of this Chapter or the laws or administrative rules  
 22           administered or enforced pursuant to this Chapter.

23                   (5) To institute civil proceedings seeking restitution, payment of costs, or  
 24           other monetary relief necessary to prevent, restore, or repair damage to grave spaces  
 25           within historic cemeteries or to isolated graves.

26                   (6) To issue permits for the disinterment and scientific study of human  
 27           skeletal remains and artifacts found in or near historic cemeteries or isolated graves.

28           The department may adopt rules and regulations to provide for the issuance of  
 29           emergency permits by the state archaeologist. Provisional permits may be used by

1           the department until such time as the program is staffed, and the department has  
 2           adopted rules and regulations governing permitting.

3                     (7) To charge an amount not in excess of the amount authorized in R.S.  
 4                     8:676(A)(7) for each such permit. The monies collected from the issuance of  
 5                     permits, subject to applicable provisions of law, shall be used as provided for funds  
 6                     from civil damages as authorized by R.S. 25:938. However, the department shall not  
 7                     be required to charge a fee for any permit issued pursuant to this Chapter.

8           §936. Revocation or suspension of permits

9                     A. The department may revoke or suspend any permit issued under the  
 10                    provisions of this Chapter upon a determination by the division that the holder of the  
 11                    permit has violated the provisions of this Chapter or the rules and regulations  
 12                    adopted pursuant to this Chapter, or has failed to meet the professional or  
 13                    occupational standards determined by the division, or has failed to ensure that the  
 14                    personnel employed by the holder of the permit meet the professional or  
 15                    occupational standards determined by the division.

16                    B. Permits may be revoked or suspended only by a ruling of the department  
 17                    based on an adjudicatory hearing held in accordance with the provisions of the  
 18                    Administrative Procedure Act.

19                    C. The department shall notify each person whose permit has been revoked  
 20                    or suspended, by certified mail, return receipt requested.

21                    D. Each person whose permit has been revoked or suspended shall return the  
 22                    permit to the department within fifteen days of the date on which the notice of the  
 23                    revocation or suspension was received.

24           §937. Unlawful acts

25                    A. It is unlawful for any person, entity, or group, to whom the department  
 26                    has not issued a permit, to knowingly:

27                             (1) Disturb a historic cemetery or an isolated grave.

28                             (2) Allow any person, entity, or group access to a historic cemetery or an  
 29                             isolated grave for the purpose of disturbing any such cemetery or grave.

1                   (3) Provide funds to or for any person, entity, or group for the purpose of  
2                   disturbing any historic cemetery or isolated grave.

3                   B. Each violation of this Section shall be punishable upon conviction of a  
4                   first offense by a fine of not more than five thousand dollars or imprisonment for not  
5                   more than one year, or both. Upon conviction of a second or subsequent offense  
6                   each violation shall be punishable by imprisonment for not more than two years or  
7                   a fine of not more than ten thousand dollars, or both. Each disturbance of a historic  
8                   cemetery or isolated grave constitutes a separate offense.

9                   §938. Civil remedies

10                   A. The department may institute civil proceedings seeking injunctive relief  
11                   to restrain and prevent violations of this Chapter or the laws or administrative rules  
12                   administered or enforced by the department.

13                   B. The department may also institute civil proceedings seeking civil damages  
14                   from any person who knowingly violates any provision of R.S. 25:937. Civil  
15                   damages shall include any or all of the following:

16                   (1) Forfeiture of any and all equipment used in disturbing the historic  
17                   cemetery or isolated grave.

18                   (2) Payment of any and all costs incurred in cleaning and restoring the  
19                   affected portions of the historic cemetery or the isolated grave.

20                   (3) Payment of any and all costs associated with protecting the historic  
21                   cemetery or isolated grave from further damage or in restoring the historic cemetery  
22                   or isolated grave to its original condition.

23                   (4) Payment of any and all costs associated with recovery of data, and  
24                   analyzing, publishing, accessioning, and curating materials when the prohibited  
25                   activity is so extensive as to preclude the restoration of the historic cemetery or  
26                   isolated grave.

27                   (5) Payment of any and all costs associated with the reinterment of the  
28                   human skeletal remains.

29                   (6) Payment of any and all costs associated with determining and collecting  
30                   the civil damages, including but not limited to filing fees, attorney fees, court costs,

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1           fees associated with discovery and the testimony of expert witnesses, and collection  
 2           costs.

3           C. The department may bring actions for injunctive relief or civil damages  
 4           in either the district court for the parish of East Baton Rouge or in the district court  
 5           where the historic cemetery or isolated grave is located.

6           D. The attorney general shall represent the department in all matters  
 7           pertaining to the administration or enforcement of this Chapter, or both, except in  
 8           those matters in which the department has employed special counsel. The  
 9           department may employ and shall fix the compensation of such special counsel with  
 10          the concurrence of the attorney general and in accordance with the laws and  
 11          regulations regarding employment of special counsel.

12          E. Civil damages, except for attorney fees, recovered by the department,  
 13          subject to applicable provisions of law, shall be used by the department to implement  
 14          and enforce the provisions of this Chapter and to fund activities of the division in  
 15          regard to restoration and protection of historic cemeteries and isolated graves, in  
 16          accordance with regulations adopted by the department and other applicable laws.  
 17          Attorney fees shall be paid to the Louisiana Department of Justice.

18          F. The provisions of this Chapter shall in no way limit the exercise of  
 19          concurrent jurisdiction by other state agencies in the prosecution of criminal or civil  
 20          lawsuits for violations of the provisions of this Chapter.

21          §939. Discovery of historic cemetery or isolated grave

22          A. Any person who has reason to believe he has discovered a historic  
 23          cemetery or an isolated grave shall notify the department through the division within  
 24          seventy-two hours of the discovery.

25          B. Any activity that may disturb the historic cemetery or isolated grave shall  
 26          immediately cease upon discovery. No activity which shall disturb the historic  
 27          cemetery or isolated grave shall resume until the department has issued a permit  
 28          governing the disposition of the historic cemetery or isolated grave. In no event shall  
 29          the department take longer than thirty days to decide on issuance of a permit without  
 30          the written agreement of all parties.

1           §940. Louisiana Historic Cemetery Trust Fund; creation

2                   A. There is hereby created a special fund in the state treasury to be known  
 3                   as the Louisiana Historic Cemetery Trust Fund. The source of the monies to be  
 4                   deposited into the fund shall be grants, gifts, and donations received by the state for  
 5                   the purposes of this Chapter, any other revenues, whether local, state, or federal, as  
 6                   may be provided by law, and other monies which may be appropriated by the  
 7                   legislature to the fund.

8                   B. After compliance with the requirements of Article VII, Section 9(B) of  
 9                   the Constitution of Louisiana, relative to the Bond Security and Redemption Fund,  
 10                  an amount equal to that deposited into the state treasury from the sources provided  
 11                  in Subsection A of this Section shall be deposited in and credited to the fund. The  
 12                  advisory board shall administer the fund and all allocations made therefrom. The  
 13                  monies in the fund shall be invested by the treasurer in the same manner as the state  
 14                  general fund, and all unexpended and unencumbered monies remaining in the fund  
 15                  at the end of each fiscal year shall remain in the fund.

16                  C. The monies in the fund shall be allocated and disbursed by the advisory  
 17                  board solely as provided for and in accordance with the provisions of this Chapter.

18           §941. Louisiana Historic Cemetery Trust Fund Advisory Board; creation;  
 19           membership

20                  A. There is hereby created the Louisiana Historic Cemetery Trust Fund  
 21                  Advisory Board within the Department of Culture, Recreation and Tourism, office  
 22                  of cultural development, division of archaeology.

23                  B.(1) The Louisiana Historic Cemetery Trust Fund Advisory Board shall be  
 24                  comprised of nine members as follows:

25                          (a) The lieutenant governor, or his designee.

26                          (b) One member shall be appointed by the Louisiana Cemetery Board.

27                          (c) Seven members shall be appointed by the lieutenant governor who are  
 28                          persons knowledgeable in the areas of cemeteries, preservation, restoration,  
 29                          architectural education, and Louisiana culture and the arts. One of the appointed  
 30                          members shall be a staff member of the division.

1                   (2) The appointing authorities shall make such appointments in such manner  
 2                   as to ensure that the advisory board membership reflects as nearly as possible a cross  
 3                   section of the race, gender, and economic status of the state's population.

4                   C. At the initial meeting of the advisory board, the term of office of each  
 5                   member appointed by the lieutenant governor shall be determined by lot. Of the  
 6                   initial members, four members shall serve for a term of three years, and three  
 7                   members shall serve for a term of two years. Thereafter, each member shall serve  
 8                   for a term of four years or until his successor is appointed and qualified.

9                   D.(1) The advisory board shall meet and organize immediately after  
 10                  appointment of its members and shall elect a chairman and a treasurer from its  
 11                  membership and other officers the advisory board deems appropriate. The advisory  
 12                  board shall adopt rules for the orderly transaction of business and shall keep a record  
 13                  of all grant applications received, their disposition, and all grants awarded. A  
 14                  majority of the appointed members of the advisory board shall constitute a quorum.  
 15                  Members shall serve without compensation.

16                  (2) The advisory board shall meet at least twice a year and at such other  
 17                  times as determined by the chairman.

18                  E. Failure of appointed members to attend three consecutive meetings shall  
 19                  be cause for removal from the advisory board, and the position shall be deemed  
 20                  vacant by notifying the appropriate appointing party.

21                  F. The advisory board shall be domiciled in East Baton Rouge Parish.

22                  G. The advisory board shall:

23                  (1) Determine the need for an inventory of historic cemeteries and isolated  
 24                  graves to be regulated by the department pursuant to this Chapter. The advisory  
 25                  board shall maintain any such inventory.

26                  (2) Adopt such rules, regulations, standards, and grant application  
 27                  procedures necessary to implement the funding provisions of this Chapter, in  
 28                  accordance with the provisions of the Administrative Procedure Act.

29                  (3) Establish priorities and criteria to be considered for grants.

1           H. Any cemetery association, cemetery corporation, or nonprofit organization  
 2           that obtains a grant shall advise the director of the division of the progress of the  
 3           project and verify and provide documentation of any and all expenditures of grant  
 4           money as deemed necessary and appropriate by the director of the division. The  
 5           director shall monitor, evaluate, and review the development and quality of projects  
 6           funded through the fund and report findings to the advisory board.

7           I. The director of the division may call a meeting of the advisory board at  
 8           any time if there is a need for consideration and awarding of an immediate grant.

9           §942. Expenditures

10           Monies in the fund shall be awarded as determined by the advisory board for  
 11           the sole purpose of the preservation, protection, and repair of historic cemeteries,  
 12           tombs, and grave plots in the state of Louisiana. No grant shall be authorized to be  
 13           made to replace funds that would be available through an applicable perpetual care  
 14           fund.

15           §943. Exclusions

16           The provisions of this Chapter shall not apply to the following:

17           (1) A cemetery operated under the authority and regulation of the board.

18           (2) An unmarked burial site that is covered under the authority and  
 19           regulation of the division or Chapter 10-A of Title 8 of the Louisiana Revised  
 20           Statutes of 1950.

21           (3) Normal cleaning of grave spaces and grounds maintenance.

22           (4) Grave spaces within abandoned cemeteries that are less than fifty years  
 23           old.

1 Section 2. R.S. 36:209(Q) is hereby enacted to read as follows:

2 §209. Transfer of boards, commissions, departments, and agencies to Department  
3 of Culture, Recreation and Tourism

4 \* \* \*

5 Q. The Louisiana Historic Cemetery Trust Fund Advisory Board (R.S.  
6 25:940 through 943) shall be placed within the Department of Culture, Recreation  
7 and Tourism as provided for agencies transferred in accordance with R.S. 36:802.

8 \* \* \*

9 Section 3. This Act shall become effective upon signature by the governor or, if not  
10 signed by the governor, upon expiration of the time for bills to become law without signature  
11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
12 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
13 effective on the day following such approval.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_