

# ASSEMBLY, No. 3688

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED MAY 12, 2016

**Sponsored by:**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**SYNOPSIS**

The “Family and Private Burial Grounds Preservation Act.”

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/17/2017)

1 AN ACT concerning the preservation of family or private burial  
2 grounds, supplementing Title 40 of the Revised Statutes, and  
3 amending P.L.2003, c.261.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. (New section) This act shall be known and may be cited as  
9 the “Family and Private Burial Grounds Preservation Act.”

10  
11 2. (New section) As used in this act:

12 “Burial objects” means any items or artifacts directly associated  
13 with human burials, which items or artifacts were intentionally  
14 deposited in an interment space as a part of a mortuary ritual at the  
15 time of interment.

16 “Cemetery” means the same as that term is defined pursuant to  
17 section 2 of the “New Jersey Cemetery Act, 2003,” P.L.2003, c.261  
18 (C.45:27-2).

19 “Cemetery company” means a nonprofit corporation, a for-profit  
20 corporation, partnership, association, or other private entity, or any  
21 other individual or entity that directly or indirectly owns, manages,  
22 operates or controls a cemetery, and which corporation, partnership,  
23 association, entity, or individual has been authorized to manage or  
24 operate the cemetery pursuant to a certificate of authority issued by  
25 the New Jersey Cemetery Board pursuant to the “New Jersey  
26 Cemetery Act, 2003,” P.L.2003, c.261 (C.45:27-1 et seq.).

27 “Department” means the Department of Environmental  
28 Protection.

29 “Relative” means a family member, blood or marriage relation,  
30 descendant, or individual in the line of ancestry of a person, and  
31 includes the person’s parents, children, siblings, grandparents,  
32 great-grandparents, grandchildren, great-grandchildren, aunts,  
33 uncles, nieces, and nephews.

34 “Disturb” or “disturbance” means any activity that significantly  
35 harms the character, condition, or physical integrity of a family or  
36 private burial ground.

37 “Economic benefit” means: (a) savings gained, and that may be  
38 realized, from avoided burial ground maintenance costs; (b)  
39 investment returns earned, and that may be earned, on the amount  
40 of avoided burial ground maintenance costs; (c) investment and  
41 resale value gained, and that may be realized, from an increase in  
42 the usability of land on which the burial ground is located, or from  
43 an improvement of the aesthetics thereof; and (d) any other  
44 financial benefit gained, and that may be realized, from a violation  
45 of section 4 or 5 of this act.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1       “Family or private burial ground” or “burial ground” means a  
2 cemetery into which the human skeletal remains of two or more  
3 persons have been intentionally deposited, and the location of  
4 which has been clearly identified through the intentional placement  
5 of stone tablets, markers, or tombstones, fencing, memorial stones  
6 or statues, or through some other obvious means, and which  
7 cemetery (1) is not owned or operated by a government entity, by a  
8 religious corporation or organization, or by a cemetery company  
9 that has received authorization to operate pursuant to the provisions  
10 of the “New Jersey Cemetery Act, 2003,” P.L.2003, c.261 (C.45:27-  
11 1 et seq.), and (2) is located on a parcel of land that has never been  
12 used for the purpose of public burials. “Family or private burial  
13 ground” or “burial ground” shall not include a crematory, as defined  
14 by section 2 of P.L.2003, c.261 (C.45:27-2).

15       “Human skeletal remains” or “remains” means a body, or part of  
16 a body, of a deceased human being, or the recoverable human bone  
17 fragments resulting from the process of cremation.

18       “Interment space” means a grave, or a tomb, crypt, or some other  
19 similarly-purposed structure, whether originally situated below, on,  
20 or above the surface of the ground, into which the human skeletal  
21 remains of a deceased person have been intentionally deposited as a  
22 part of death rites, rituals, or ceremonies.

23       “Maintenance and preservation” means all of the activities  
24 undertaken to uphold or sustain the character, condition, and  
25 physical integrity of a family or private burial ground, and includes  
26 the ordinary care and upkeep of the burial ground.

27       “Permanent disinterment” means the dismantling of a family or  
28 private burial ground and the permanent removal therefrom of all  
29 human skeletal remains and burial objects, memorial structures and  
30 markers, crypts or other moveable interment spaces contained  
31 therein, and fences, railings, or other structures bounding the same,  
32 which permanent removal has been authorized by the department  
33 pursuant to section 5 or 8 of this act, P.L. , c. (C. and C. ,  
34 respectively) (pending before the Legislature as this bill) .  
35

36       3. (New section) The Department of Environmental Protection  
37 shall administer the provisions of this act and shall have general  
38 supervision and regulatory authority, and jurisdiction, over all  
39 family or private burial grounds in the State.

40       a. The department shall have the power to:

41       (1) apply for, accept, and receive grant or loan money from any  
42 federal, State, or other public or private source, and solicit and  
43 accept gifts, legacies, bequests, and endowments for, or in aid of,  
44 the purposes of this act;

45       (2) enter into any agreement or contract, execute any  
46 instrument, and perform any act or thing necessary, convenient, or  
47 desirable to carry out any power expressly given in this act;

1 (3) authorize and effectuate the permanent disinterment of  
2 human skeletal remains or burial objects interred in a burial ground,  
3 pursuant to the provisions of section 5 or 8 of this act, P.L. ,  
4 c. (C. and C. , respectively) (pending before the Legislature as  
5 this bill);

6 (4) request assistance from, and avail itself of the services of,  
7 the employees of any State, county, or municipal department, board,  
8 commission, or agency as may be necessary to carry out any power  
9 expressly given in this act;

10 (5) institute an action in the Superior Court for injunctive or  
11 other relief, as is necessary to enforce this act or the rules and  
12 regulations established hereunder; and

13 (6) in accordance with the “Administrative Procedure Act,”  
14 P.L.1968, c.410 (C.52:14B-1 et seq.), adopt, amend, and repeal  
15 rules and regulations and issue orders as may be necessary to carry  
16 out the purposes of this act.

17 b. The department shall have the duty to:

18 (1) formulate policies for the maintenance and preservation of  
19 family or private burial grounds in the State;

20 (2) establish, maintain, and regularly update a written record  
21 and map of all family or private burial grounds in the State, and  
22 make the same information available for review by the public;

23 (3) prepare and distribute informational materials to advise the  
24 public with respect to New Jersey’s family or private burial  
25 grounds;

26 (4) timely review and respond to all proposals regarding  
27 construction, excavation, or building activities anticipated to take  
28 place on or near a family or private burial ground, or regarding the  
29 municipal conversion of a burial ground; and

30 (5) submit biennially a report to the Governor, and pursuant to  
31 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature,  
32 describing the activities undertaken by the department during the  
33 preceding two years in relation to this act, accounting for any  
34 moneys collected and used pursuant to this act, and providing any  
35 recommendations or requests it deems appropriate to further the  
36 purposes of the act.

37

38 4. (New section) a. Except when approval is obtained from  
39 the appropriate authority or authorities, as provided by this act, it  
40 shall be unlawful for any person to intentionally, willfully, or  
41 knowingly:

42 (1) disturb, destroy, mutilate, deface, or injure a family or  
43 private burial ground or any human skeletal remains or burial  
44 objects contained therein;

45 (2) tamper with an interment space, or expose through  
46 excavation, disinter, or remove any human skeletal remains or  
47 burial objects from a burial ground’s interment spaces;

1 (3) destroy, mutilate, deface, injure, knock down, or remove any  
2 ornamentation, or any tombstone, monument, stone marker, statue,  
3 or other memorial structure in a family or private burial ground;

4 (4) destroy, mutilate, deface, injure, knock down, or remove any  
5 fence, railing, or other structure that has been erected along the  
6 boundary of a family or private burial ground; or

7 (5) allow any person, entity, or group access, or facilitate such  
8 access, to a family or private burial ground for any of the purposes  
9 identified in paragraphs (1) through (4) of this subsection.

10 b. The department shall ensure that any human skeletal remains  
11 or burial objects that have been unlawfully disinterred in violation  
12 of the provisions of subsection a. of this section are reinterred in  
13 accordance with the provisions of section 9 of this act,  
14 P.L. , c. (C. ) (pending before the Legislature as this bill).

15 c. This section shall not apply to a person or entity, or the  
16 representative thereof, who destroys, injures, or removes a  
17 tombstone, monument, stone marker, statue, or other memorial  
18 structure, or a fence, railing, or other boundary marker in a family  
19 or private burial ground for purposes that are consistent with the  
20 maintenance and preservation of the burial ground as a burial  
21 ground.

22  
23 5. (New section) a. Any new construction, excavation, or  
24 building in the area of a family or private burial ground shall  
25 comply with local land use regulations concerning burial sites,  
26 burial grounds, or cemeteries. In the absence of applicable local  
27 regulations, no new construction, excavation, or building shall be  
28 conducted within 15 feet of the boundaries of a family or private  
29 burial ground, except when such construction, excavation, or  
30 building is approved, in writing, by a relative of each person  
31 interred in the burial ground, or when such construction,  
32 excavation, or building is necessary:

33 (1) to protect or preserve the public health, as determined by the  
34 governing body of the municipality, by the local board of health, or  
35 by the Department of Health and Senior Services, or as ordered by  
36 the Superior Court based on good cause shown;

37 (2) for the construction of a capital improvement or for  
38 construction activities related to the provision of an essential public  
39 service, as approved by the governing body of the municipality with  
40 concurrence from the department;

41 (3) for the construction of a State highway, as approved by the  
42 Commissioner of Transportation with concurrence from the  
43 department; or

44 (4) for the construction, in accordance with the provisions of  
45 subsection b. of this section, of a private sewer line connection to a  
46 public sewer system, as approved by the governing body of the  
47 municipality with concurrence from the department.

1       b. No new construction of a private sewer line connection to a  
2 public sewer system shall be undertaken pursuant to the provisions  
3 of subsection a. of this section unless:

- 4       (1) no other practicable alternative exists;  
5       (2) the excavation or construction will take place at the  
6 maximum possible distance from the burial ground;  
7       (3) public notice is provided by the affected municipality in a  
8 manner that allows at least two weeks for members of the public to  
9 submit testimony prior to any approval, construction, excavation, or  
10 building; and  
11       (4) no construction or excavation equipment will be placed on  
12 any part of the burial ground or within six feet thereof at any time  
13 during the construction of the sewer connection.

14       c. If the disbanding of a burial ground is deemed by the  
15 department to be necessary and appropriate for the purposes of  
16 facilitating construction, excavation, or building activities that have  
17 been approved pursuant to this section, or if such action is  
18 approved, in writing, by a relative of each person interred in the  
19 burial ground, the department may authorize the permanent  
20 disinterment of the human skeletal remains and burial objects  
21 contained within the burial ground and their reinterment in another  
22 cemetery.

23       d. A person who provides written relative approval, as  
24 provided by this section, for any construction, excavation, or  
25 building activities occurring on or near a burial ground, or for the  
26 permanent disinterment of human skeletal remains or burial objects  
27 contained in a burial ground, warrants the truth of the facts stated  
28 and the authority to authorize such activity. Any person who  
29 falsifies information in violation of this subsection shall be liable,  
30 in addition to any other penalties authorized by this act, for  
31 damages caused by a false statement.  
32

33       6. (New section) a. The owner of real property containing a  
34 family or private burial ground shall notify the department of the  
35 existence thereof within 120 days after the effective date of this act.  
36 The notice shall include, as indicated on tombstones or memorial  
37 plaques, or as otherwise known and substantiated by the property  
38 owner, the names, birthdates, and deathdates of the persons interred  
39 in the burial ground.

40       b. (1) The department shall determine, based on an evaluation  
41 of the information contained in a notice that is submitted in  
42 accordance with subsection a. of this section, or through any other  
43 reasonable inquiry or investigation, whether a family or private  
44 burial ground qualifies as a “historic cemetery,” as that term is  
45 defined by section 3 of P.L.1983, c.294 (C.40:10B-3).

46       (2) The department or its authorized representatives may  
47 conduct excavation activities in a burial ground if necessary to  
48 make the determination required by this subsection. The

1 department and its authorized representatives shall disturb the burial  
2 ground as little as possible, and shall remedy, to the greatest extent  
3 possible, any disturbance that is caused during the entity's  
4 exploration and excavation of the area. Any human skeletal  
5 remains or burial objects that are unearthed as a result of excavation  
6 activities authorized by this paragraph shall be reinterred in  
7 accordance with the provisions of section 9 of this act, P.L. ,  
8 c. (C. ) (pending before the Legislature as this bill), as soon as is  
9 reasonably possible after a determination has been made by the  
10 department pursuant to this subsection.

11 (3) The owner of property on which a family or private burial  
12 ground is located shall provide a reasonable means of ingress and  
13 egress over his or her private land to the burial ground, as is  
14 necessary to facilitate the work of the department pursuant to this  
15 subsection.

16 (4) Within 30 days after a determination is made by the  
17 department pursuant to this subsection, the department shall: (a)  
18 submit to the owner of the real property on which the burial ground  
19 is located, a disclosure statement describing the evidence, if any,  
20 that was recovered at the location, and providing a notation as to the  
21 department's conclusion regarding the status and nature of the  
22 burial ground as a historic cemetery; and (b) notify the governing  
23 body of the municipality in which the burial ground is located of the  
24 presence of the burial ground therein and its status as a historic  
25 cemetery. The department's notice to the municipality shall include  
26 a legal description of the land on which the burial ground is located,  
27 and shall identify the approximate location and size of the burial  
28 ground thereon, and the number of interment spaces contained  
29 therein.

30

31 7. (New section) a. The owner of real property containing a  
32 family or private burial ground shall take appropriate action, prior  
33 to conveyance of the property, to ensure that the deed accurately  
34 reflects the presence the burial ground thereon.

35 b. The owner of real property containing a family or private  
36 burial ground shall not permit any new interments in the burial  
37 ground.

38

39 8. (New section) a. The owner of real property containing a  
40 family or private burial ground may apply to the governing body of  
41 the municipality to take possession of the burial ground, and may  
42 convey to the municipality the person's interest therein.

43 b. Whenever the owner of real property containing a burial  
44 ground has neglected to care for the burial ground, so that in the  
45 opinion of the department or the local board of health, the burial  
46 ground has become a detriment to the public health or safety, or a  
47 public nuisance, the department or the local board of health, as the  
48 case may be, may apply to the governing body of the municipality

1 to take possession of the burial ground pursuant to the “Eminent  
2 Domain Act of 1971,” P.L.1971, c.361 (C.20:3-1 et seq.).

3 c. If a conveyance or acquisition made pursuant to this section  
4 would cause a burial ground to be inaccessible from any public  
5 way, the conveyance or acquisition shall be made subject to an  
6 easement over the property owner’s private land, for the benefit of  
7 the spouse and relatives of any person interred in the burial ground,  
8 and for the use of any person or entity authorized by the  
9 municipality to conduct maintenance and preservation activities at  
10 the burial ground. The easement may be used only for persons to  
11 walk in a direct route from the public way nearest the burial ground  
12 to the burial ground at reasonable hours.

13 d. A burial ground that is conveyed to, or acquired by, a  
14 municipality pursuant to this section shall be maintained and  
15 preserved as a burial ground, and shall not be converted to serve  
16 any other purposes, except in the case that conversion is approved,  
17 in writing, by a relative of each of the persons interred in the burial  
18 ground, or is necessary for any of the purposes listed in section 5 of  
19 this act, P.L. , c. (C. ) (pending before the Legislature as this  
20 bill), and is approved by the proper authorities, as provided in that  
21 section. In the event that a municipality receives the approvals  
22 necessary for a burial ground’s conversion under this subsection,  
23 the department shall authorize the permanent disinterment of human  
24 skeletal remains and burial objects in the burial ground and their  
25 reinterment in another cemetery, in accordance with the provisions  
26 of section 9 of this act, P.L. , c. (C. ) (pending before the  
27 Legislature as this bill).

28 e. A person who provides written relative approval, as  
29 provided by this section, for the municipal conversion of a burial  
30 ground, warrants the truth of the facts stated and the authority to  
31 authorize such activity. Any person who falsifies information in  
32 violation of this subsection shall be liable, in addition to any other  
33 penalties authorized by this act, for damages caused by a false  
34 statement.

35 f. No new interments shall be permitted in any burial ground  
36 that has been conveyed to, or acquired by, a municipality pursuant  
37 to this section.

38

39 9. (New section) a. Except as provided by subsection b. of  
40 this section, the department shall take appropriate action to ensure  
41 that any human skeletal remains or burial objects either lawfully or  
42 unlawfully recovered or disinterred from a family or private burial  
43 ground are reinterred, as soon as is reasonably possible after their  
44 recovery or disinterment, in the same interment space in the burial  
45 ground from which they were taken. If the interment space of  
46 origin is unknown, the human skeletal remains or burial objects  
47 may be reinterred in any empty interment space contained within  
48 the same burial ground from which they were removed.



1       b. (1) When permanent disinterment is authorized by the  
2 department pursuant to section 5 or 8 of this act, P.L. , c. (C.  
3 and C. , respectively) (pending before the Legislature as this bill),  
4 the department shall take appropriate action to ensure that any  
5 human skeletal remains or burial objects recovered from the burial  
6 ground pursuant to that authorization are reinterred, as soon as is  
7 reasonably possible after their disinterment, in a cemetery that is  
8 owned or operated by a cemetery company, a religious corporation  
9 or organization, or a government entity. The department may enter  
10 into a contract with any cemetery company, religious corporation or  
11 organization, or government entity owning or controlling a  
12 cemetery, or with any other person, to remove the human skeletal  
13 remains or burial objects interred in the burial ground and reinter  
14 the same in the designated new resting place; to remove from the  
15 burial ground any tombs, headstones, memorial stones or statues, or  
16 other markers or structures and replace them in the new resting  
17 place; and to provide for the proper maintenance and preservation  
18 of the new resting place.

19       (2) In determining an appropriate location for the reinterment of  
20 human skeletal remains or burial objects pursuant to this subsection,  
21 the department shall endeavor to comply with all reasonable  
22 requests made by relatives of the person whose remains or burial  
23 objects are being reinterred.

24       (3) The department shall maintain complete and accurate  
25 records identifying the cemetery in which human skeletal remains  
26 or burial objects are reinterred pursuant to this subsection, and the  
27 identity, if known, of the persons whose remains or burial objects  
28 have been reinterred in the new cemetery location.

29

30       10. (New section) a. A person who violates the provisions of  
31 this act shall be guilty of:

32       (1) a criminal offense, as provided by N.J.S.2C:17-3 (criminal  
33 mischief; tampering with grave site), N.J.S.2C:20-2 (general theft  
34 crimes; theft of human remains), section 1 of P.L.2007, c.321  
35 (C.2C:20-2.3) (theft of headstones or flags from grave sites),  
36 section 1 of P.L.2002, c.127 (C.2C:22-1) (disturbance or  
37 desecration of human remains), or section 2 of P.L.1981, c.282  
38 (C.2C:33-11) (exposure to threat of violence through defacement of  
39 private cemetery property), as applicable; or

40       (2) a disorderly persons offense, if none of the penalty  
41 provisions identified in paragraph (1) of this subsection is  
42 applicable to the violative conduct that forms the basis for the  
43 current conviction; or

44       (3) a crime of the fourth degree, if: (a) none of the penalty  
45 provisions identified in paragraph (1) of this subsection is  
46 applicable to the violative conduct that forms the basis for the  
47 current conviction, and (b) the offender has previously been  
48 convicted of an offense under this subsection.

1       b. Notwithstanding the provisions of N.J.S.2C:43-3 to the  
2 contrary:

3       (1) a person who is convicted of a disorderly persons offense  
4 under paragraph (2) of subsection a. of this section shall be subject  
5 to a fine of up to \$25,000; and

6       (2) a person who is convicted of a crime of the fourth degree  
7 under paragraph (3) of subsection a. of this section shall be subject  
8 to a fine of no less than \$25,000, nor more than \$100,000, and a  
9 sentence of imprisonment, the term of which shall be determined by  
10 a court in accordance with the provisions of N.J.S.2C:43-6. A  
11 sentence of imprisonment that is imposed pursuant to this paragraph  
12 may be suspended only when the court is clearly convinced that  
13 imprisonment would result in manifest injustice.

14       c. (1) In addition to any other penalties authorized by law, a  
15 person who violates the provisions of section 4 or 5 of this act,  
16 P.L. , c. (C. and C. , respectively) (pending before the  
17 Legislature as this bill), with the specific intent to attain an  
18 economic benefit, as defined by this act, shall be guilty of a crime  
19 of the fourth degree.

20       (2) Notwithstanding the provisions of N.J.S.2C:43-3 and  
21 N.J.S.2C:43-6 to the contrary, a person convicted under this  
22 subsection shall be subject to a sentence of imprisonment of not less  
23 than one year, nor more than five years, and a fine of not less than  
24 \$100,000, nor more than \$10,000,000. The fine imposed pursuant  
25 to this paragraph shall be consistent with, and based upon, the value  
26 of the economic benefit attained by the offender as a result of the  
27 violation.

28       d. If a violation of this act is of a continuing nature, each day  
29 during which the violation continues shall constitute an additional,  
30 separate, and distinct offense.

31       e. Any penalty amounts that are collected from criminal  
32 prosecutions initiated in accordance with this section shall be  
33 deposited into the Family and Private Burial Grounds Preservation  
34 Fund, established pursuant to section 14 of this act, P.L. ,  
35 c. (C. ) (pending before the Legislature as this bill).

36       f. The fact that a criminal prosecution for a violation of this act  
37 is not instituted or, where instituted, terminates without a  
38 conviction, shall not preclude the filing of a civil action pursuant to  
39 the provisions of section 11 or 13 of this act, P.L. ,  
40 c. (C. and C. , respectively). A final judgment rendered in favor  
41 of the State in any criminal proceeding brought pursuant to this  
42 section shall stop the defendant from denying the same conduct in a  
43 civil action that is brought pursuant to this act.

44

45       11. (New section) a. Any person who violates the provisions of  
46 section 4 or 5 of this act, P.L. , c. (C. and C. , respectively)  
47 (pending before the Legislature as this bill), or any rule or  
48 regulation adopted pursuant thereto, shall, in addition to any other

1 penalties provided by law, be subject upon order of a court to a civil  
2 penalty of not more than \$100,000 for a first offense and not more  
3 than \$200,000 for any subsequent offense. A civil penalty imposed  
4 pursuant to this subsection shall be collected with costs, in the name  
5 of the commissioner, in a summary proceeding initiated pursuant to  
6 the “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A-58-  
7 10 et seq.). The Superior Court and the municipal courts shall have  
8 jurisdiction over proceedings for the enforcement of penalties  
9 provided by this subsection.

10 b. In addition to any penalties, costs, or interest charges that  
11 may be imposed pursuant to this section, the court may assess  
12 against a violator, the value of any economic benefit accruing  
13 thereto from the violation.

14 c. Any moneys that are collected from a defendant pursuant to  
15 this section shall be deposited into the Family and Private Burial  
16 Grounds Preservation Fund, established pursuant to section 14 of  
17 this act, P.L. , c. (C. ) (pending before the Legislature as this  
18 bill).

19

20 12. (New section) a. Except as provided by subsection b. of  
21 this section, a person may be held liable for actions taken by the  
22 person’s agent or authorized representative in violation of this act if  
23 a court finds that the person: (1) knew or reasonably should have  
24 known that the person’s agent or authorized representative was, or  
25 would be, taking action in violation of the provisions of this act,  
26 and (2) facilitated, promoted, or otherwise acquiesced to the  
27 offensive action.

28 b. A person may be held liable under subsection c. of section  
29 10 of this act, P.L. , c. (C. ) (pending before the Legislature as  
30 this bill), for actions taken by the person’s agent or authorized  
31 representative in violation of section 4 or 5 of this act, P.L. ,  
32 c. (C. and C. , respectively) (pending before the Legislature as  
33 this bill), if a court finds that the person: (1) knew that the person’s  
34 agent or authorized representative was, or would be, taking action  
35 in violation of the provisions of section 4 or 5 of this act, and (2)  
36 with the specific intent to attain an economic benefit, as defined by  
37 this act, facilitated, promoted, or otherwise acquiesced to the  
38 offensive action.

39 c. As used in this section, “acquiescence” shall include silence  
40 or inaction in the face of an apparent violation of this act.

41

42 13. (New section) a. (1) The relative of any person interred in  
43 a burial ground that is the subject of a violation of section 4 or 5 of  
44 this act, P.L. , c. (C. and C. , respectively) (pending before the  
45 Legislature as this bill), may bring a civil action for damages  
46 against the person alleged to have committed the violation. A  
47 relative seeking damages pursuant to this section shall establish, by  
48 a preponderance of the evidence, that the alleged offender took

1 action, in violation of the provisions of section 4 or 5 of this act,  
2 which caused damage or harm to the human skeletal remains, burial  
3 objects, or interment space or adornments thereon, of any of the  
4 relative's relations. The Attorney General, as *parens patriae*, may  
5 initiate a cause of action against a person who violates section 4 or  
6 5 of this act on behalf of any relatives who have sustained injury as  
7 provided in this paragraph.

8 (2) In a case where vicarious liability is established pursuant to  
9 section 12 of this act, P.L. , c. (C. ) (pending before the  
10 Legislature as this bill), a relative may bring civil action for  
11 damages, in accordance with the provisions of this subsection,  
12 against either the agent who took offensive action in violation of the  
13 act's provisions, or the person who facilitated, encouraged,  
14 promoted, requested, authorized, or otherwise acquiesced to, the  
15 agent's taking of such offensive action.

16 (3) Upon proof, by a preponderance of the evidence, of a  
17 defendant's violation of section 4 or 5 of this act and of resulting  
18 damages to a relative as provided in paragraph (1) of this  
19 subsection, the defendant shall be liable to the relative for:

20 (a) civil damages in an amount of three times the value of all  
21 costs incurred by the relative to remedy the effects of the violation,  
22 which costs may include, but are not limited to, costs incurred for:  
23 (i) restoration, to the maximum extent practicable and feasible, of  
24 the injured interment space of any of the relative's relations; (ii)  
25 replacement, renovation, removal, or relocation of a tombstone,  
26 monument, stone marker, statute, or other memorial structure used  
27 in association with the interment space of any of the relative's  
28 relations; (iii) removal, relocation, and reinterment of the human  
29 skeletal remains and burial objects of any of the relative's relations;  
30 (iv) clean-up of the injured interment space of any of the relative's  
31 relations, and removal therefrom of objects or other evidence  
32 associated with, or used to facilitate, the violation of this act; and  
33 (v) restoration, as necessary and appropriate, of the land and  
34 adornments in the burial ground, which surround and complement  
35 the injured interment space of any of the relative's relations;

36 (b) damages for emotional distress suffered by the relative as a  
37 direct result of the violation of section 4 or 5 of this act; and

38 (c) reimbursement for any costs incurred by the relative for  
39 attorneys' fees, court costs, or other out-of-pocket expenses related  
40 to the litigation, except that in the case that a cause of action is  
41 initiated by the Attorney General, as *parens patriae*, such costs,  
42 including the costs of investigation, shall be awarded to the State.

43 b. The cause of action authorized by this section shall be in  
44 addition to and not in lieu of any other action, injunctive relief, or  
45 any other remedy available at law, except that an award entered  
46 pursuant to this section shall be reduced by the amount of any  
47 restitution, if any, that has been awarded for the same injury  
48 following criminal conviction or juvenile adjudication pursuant to

1 section 10 of this act, P.L. , c. (C. ) (pending before the  
2 Legislature as this bill).

3

4 14. (New section) a. The department shall establish and  
5 manage a fund, to be known as the Family and Private Burial  
6 Grounds Preservation Fund, and shall expend moneys in the fund as  
7 is reasonably necessary to effectuate the purposes of this act.

8 b. The moneys to be deposited in the Family and Private Burial  
9 Grounds Preservation Fund shall include:

10 (1) Any penalty moneys collected by the department pursuant to  
11 sections 10 and 11 of this act, P.L. , c. (C. and C. ,  
12 respectively) (pending before the Legislature as this bill);

13 (2) Any moneys appropriated and allocated to the department by  
14 the Legislature for purposes consistent with this act;

15 (3) Any gifts, legacies, bequests, or endowments received by the  
16 department for, or in aid of, purposes consistent with this act;

17 (4) Any grant or loan moneys awarded to the department by a  
18 federal, State, or other public or private source for purposes  
19 consistent with this act;

20 (5) Any interest accrued on moneys contained in the fund; and

21 (6) Any dividends or returns received from investment of the  
22 moneys in the fund.

23

24 15. Section 23 of P.L.2003, c.261 (C.45:27-23) is amended to  
25 read as follows:

26 23. a. Except as otherwise provided in this section, or pursuant  
27 to court order, human remains shall not be removed from an  
28 interment space unless:

29 (1) the surviving spouse, adult children and the owner of the  
30 interment space authorize removal in writing;

31 (2) removal is authorized by a State disinterment permit issued  
32 by the local board of health; and

33 (3) the cemetery finds that removal is feasible.

34 b. No disinterment permit is required:

35 (1) for the temporary removal or repositioning of vaulted human  
36 remains to allow for the deepening of an interment space within the  
37 same lot;

38 (2) for the transfer of temporarily stored remains from the place  
39 of temporary storage to the place of final interment within the same  
40 cemetery in accordance with applicable law;

41 (3) for the removal of cremated human remains. However, prior  
42 consent shall be obtained from the interment space owner and the  
43 person having the right to control the removal of the decedent's  
44 remains.

45 c. Human remains buried on property that is not part of a  
46 cemetery may be removed by the owner of the property provided  
47 that removal is in compliance with applicable law and the remains  
48 are then properly re-buried in a cemetery.

1 d. A person who signs an authorization for the disinterment of  
2 human remains warrants the truth of the facts stated and the  
3 authority to order the disinterment. The person shall be liable for  
4 damages caused by a false statement or breach of warranty. A  
5 cemetery or funeral director shall not be liable for disinterment in  
6 accordance with the authorization unless it had reasonable notice  
7 that the representations were untrue or that the person lacked the  
8 right to control the disinterment. An action against a cemetery  
9 company relating to the disinterment of human remains shall not be  
10 brought more than one year from the date of disinterment.

11 e. This section shall not apply to the removal of human remains  
12 from an interment space that is located in a “family or private burial  
13 ground” as defined by section 2 of P.L. , c. (C. ) (pending  
14 before the Legislature as this bill), which removal shall, instead,  
15 comply with the provisions of the “Family and Private Burial  
16 Grounds Preservation Act,” P.L. , c. (C. ) (pending before  
17 the Legislature as this bill).

18 (cf: P.L.2003, c.261, s.23)

19  
20 16. Section 25 of P.L.2003, c.261 (C.45:27-25) is amended to  
21 read as follows:

22 25. a. A cemetery shall not be established or enlarged in any  
23 municipality without first obtaining the consent of the municipality  
24 by resolution.

25 b. No more than five cemeteries may be established in any one  
26 municipality, and not more than 3% of the area of any municipality  
27 shall be devoted to cemetery purposes . This subsection shall not  
28 apply to a “family or private burial ground” as defined by section 2  
29 of P.L. , c. (C. ) (pending before the Legislature as this  
30 bill).

31 c. A cemetery shall not be established or expanded to exceed  
32 250 acres at any one location.

33 d. The governing body of a municipality, by resolution, may  
34 waive the limitations of subsection b. or c. of this section if it finds  
35 that there is a public need for additional cemetery lands and that it  
36 is in the public interest to waive them.

37 e. A cemetery company shall not dedicate additional land to  
38 cemetery purposes without board approval.

39 (cf: P.L.2003, c.261, s.25)

40  
41 17. This act shall take effect immediately.

#### 42 43 44 STATEMENT

45  
46 This bill, which would be known as the “Family and Private  
47 Burial Grounds Preservation Act,” would provide the legal  
48 protection necessary to prevent the disturbance and destruction of

1 burial grounds in the State that have been established and used  
2 exclusively by private persons or families. For ease of practical  
3 application, the bill would define “family or private burial ground”  
4 (burial ground) to mean, in particular, a cemetery that (1) contains  
5 the remains of two or more persons; (2) is clearly identified through  
6 the intentional placement of stone tablets, markers, or tombstones,  
7 fencing, memorial stones or statutes, or through some other obvious  
8 means; (3) is not owned or operated by a government entity, by a  
9 religious corporation or organization, or by a cemetery company  
10 that has received authorization to operate pursuant to the provisions  
11 of the “New Jersey Cemetery Act of 2003;” and (4) is not located  
12 on land that has ever been used for the purpose of public burials.

13 The bill would authorize the Department of Environmental  
14 Protection (DEP) to administer and enforce its provisions, and it  
15 would grant the DEP general supervisory and regulatory authority,  
16 and jurisdiction, over all family and private burial grounds in the  
17 State.

18 The bill would make it unlawful, in particular, for any person to  
19 intentionally, willfully, or knowingly: (1) disturb, destroy, mutilate,  
20 deface, or injure a family or private burial ground or any human  
21 skeletal remains or burial objects contained therein; (2) tamper with  
22 an interment space, or expose through excavation, disinter, or  
23 remove any human skeletal remains or burial objects contained in a  
24 burial ground’s interment spaces; (3) destroy, mutilate, deface,  
25 injure, knock down, or remove any ornamentation, or any  
26 tombstone, monument, stone marker, statue, or other memorial  
27 structure in a burial ground; (4) destroy, mutilate, deface, injure,  
28 knock down, or remove any fence, railing, or other structure that  
29 has been erected along the boundary of a burial ground; or (5) allow  
30 any person, entity, or group access, or facilitate such access, to a  
31 burial ground for any of the above-listed purposes.

32 In addition, the bill would require any new construction,  
33 excavation, or building in the area of a burial ground to comply  
34 with local land use regulations concerning burial sites, burial  
35 grounds, or cemeteries. The bill would specify, moreover, that in  
36 the absence of applicable local regulations, no new construction,  
37 excavation, or building may be conducted within 15 feet of the  
38 boundaries of a burial ground, except when such activity is  
39 approved, in writing, by a relative of each person interred in the  
40 burial ground, or is determined to be necessary for: (1) the  
41 protection of public health; (2) the construction of capital  
42 improvements or the provision of essential public services; (3) the  
43 construction of a State highway; or (4) the construction, in  
44 accordance with specified limitations, of a private sewer line  
45 connection to a public sewer system.

46 Pursuant to the bill’s provisions, a person who owns property on  
47 which a burial ground is located would be required to report the  
48 existence of the burial ground to the DEP within 120 days after the

1 bill's effective date, and also to record the existence of the burial  
2 ground in the deed to the property. The bill, however, would allow  
3 a property owner to apply to the municipality to take possession of  
4 any burial ground on the property, and to convey to the  
5 municipality, the property owner's interest therein. In addition, if  
6 the DEP or the local board of health concludes that a burial ground  
7 has been neglected by a property owner to the point that it has  
8 become a public hazard or nuisance, the department or the local  
9 board of health, as the case may be, would be authorized to apply to  
10 the municipality to take possession of the burial ground pursuant to  
11 the "Eminent Domain Act of 1971."

12 A municipality that has acquired a burial ground would be  
13 authorized to convert the burial ground to serve another purpose  
14 only if such conversion is approved, in writing, by a living relative  
15 of each person interred therein, or is determined to be necessary for  
16 one of the reasons listed above, for which construction, excavation,  
17 or building activities may be authorized.

18 The bill would allow the department to authorize the total  
19 dismantling of a burial ground and the permanent disinterment and  
20 reinterment in another cemetery of the human skeletal remains and  
21 burial objects contained therein, only if such action: (1) is deemed  
22 by the department to be necessary and appropriate for the purposes  
23 of facilitating an approved municipal conversion of a burial ground,  
24 or an approved construction, excavation, or building activity taking  
25 place on or near a burial ground, or (2) is otherwise approved, in  
26 writing, by a living relative of each person interred in the burial  
27 ground. Any person who gives such written relative approval –  
28 whether for the municipal conversion of a burial ground, for  
29 construction, excavation, or building activities taking place on or  
30 near a burial ground, or for the permanent disinterment of human  
31 skeletal remains or burial objects in a burial ground – would be  
32 liable, in addition to any other applicable penalties, for damages  
33 caused by a false statement.

34 The bill would require any human skeletal remains or burial  
35 objects that are either lawfully or unlawfully recovered from a  
36 burial ground to be reinterred, as soon as is reasonably possible, in  
37 the same burial ground from which they were taken, except in the  
38 case that permanent disinterment has been authorized by the  
39 department. In such a case, the bill would require any disinterred  
40 human skeletal remains or burial objects to be reinterred in a  
41 cemetery that is owned or operated by a cemetery company,  
42 religious corporation or organization, or government entity.

43 Failure to comply with any of the bill's provisions would subject  
44 a violator to both criminal and civil liability. In particular, a person  
45 who violates the bill's provisions would be guilty of:

46 (1) a criminal offense, ranging from a crime of the fourth degree  
47 to a crime of the second degree, as provided by N.J.S.2C:17-3  
48 (criminal mischief; tampering with grave site), N.J.S.2C:20-2



1 (general theft; theft of human remains), section 1 of P.L.2007, c.321  
2 (C.2C:20-2.3) (theft of headstones or flags from grave sites),  
3 section 1 of P.L.2002, c.127 (C.2C:22-1) (disturbance or  
4 desecration of human remains), or section 2 of P.L.1981, c.282  
5 (C.2C:33-11) (exposure to threat of violence through defacement of  
6 private cemetery property), as applicable; or

7 (2) a disorderly persons offense, subject to a fine of up to  
8 \$25,000, if none of the penalty provisions identified in paragraph  
9 (1) is applicable to the violative conduct; or

10 (3) a crime of the fourth degree, subject to imprisonment and a  
11 fine of no less than \$25,000 nor more than \$100,000, if: (a) none of  
12 the penalty provisions identified in paragraph (1) is applicable to  
13 the violative conduct, and (b) the offender has previously been  
14 convicted of violating the bill's provisions. A court would be  
15 authorized to suspend a sentence of imprisonment imposed for such  
16 an offense only if the court determines that imprisonment would  
17 result in manifest injustice.

18 A person who violates the provisions of section 4 or 5 of this bill  
19 with the specific intent to attain an economic benefit therefrom,  
20 would additionally be guilty of a crime of the fourth degree, and  
21 would be subject to a sentence of imprisonment of not less than one  
22 year, nor more than five years, and a fine of not less than \$100,000,  
23 nor more than \$10,000,000, which fine must be consistent with, and  
24 based upon, the value of the economic benefit attained by the  
25 offender as a result of the violation. "Economic benefit" would be  
26 defined to include, among other things, the investment and resale  
27 value gained, and that may be realized, from an increase in the  
28 usability of land on which the burial ground is located, or from an  
29 improvement of the aesthetics thereof, which results from a  
30 violation under the bill.

31 In addition to the criminal penalties provided by the bill and any  
32 other penalties provided by law, a person who desecrates or  
33 destroys a burial ground or the human remains or objects therein,  
34 would be subject, under the bill's provisions, to a civil penalty of up  
35 to \$100,000 for a first offense, and up to \$200,000 for a second or  
36 subsequent offense. The bill would authorize a court, moreover, to  
37 hold a person vicariously liable, in certain circumstances, for  
38 offensive conduct that is engaged in by the person's agent or  
39 authorized representative.

40 Finally, the bill would authorize any aggrieved relative of a  
41 person interred in a compromised burial ground to file a civil action  
42 for damages against the person responsible for causing the harm to  
43 the interment spaces or remains of the relative's relations. A  
44 prevailing relative in such a case would be entitled to the receipt of  
45 damages amounting to three times the value of all costs incurred by  
46 the relative to remedy the effects of violation. In addition, the  
47 prevailing relative would be entitled to damages for emotional  
48 distress and reimbursement for out-of-pocket litigation expenses.

1       By providing for the imposition of significant civil and criminal  
2 penalties, the granting of civil damage awards, and the finding of  
3 vicarious liability, the bill endeavors to create a system of  
4 deterrence that will effectively protect family and private burial  
5 grounds against encroachment or destruction by corporate actors or  
6 big business interests who may receive a substantial net benefit  
7 from destruction thereof, and who, therefore, may not be dissuaded  
8 from violations of the bill absent the existence of such substantial  
9 penalties.

10       With the exception of awards for civil damages, any civil or  
11 criminal penalties that are collected in accordance with the bill's  
12 provisions would be deposited in the "Family and Private Burial  
13 Grounds Preservation Fund," which would be established and  
14 maintained by the department pursuant to the bill's provisions. The  
15 bill would also require the deposit into the Fund of any additional  
16 moneys that are appropriated or allocated to, or otherwise received  
17 by, the department for the bill's purposes.