

# SENATE BILL 1242

N1, E1, C2

8lr4048  
CF HB 877

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By: **Senator Conway**

Introduced and read first time: March 5, 2018

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Burial Sites – Access, Disinterment, Criminal Penalties, and Tax Credit**

3 FOR the purpose of requiring a person who brings a certain action for sale of a burial  
4 ground to conduct a certain genealogical and historical search; authorizing a court  
5 to reject the sale of a burial ground under certain circumstances; prohibiting a person  
6 from desecrating human remains; authorizing the Office of Cemetery Oversight,  
7 rather than a certain State's Attorney, to authorize the removal or relocation of  
8 human remains under certain circumstances; authorizing the Office of Cemetery  
9 Oversight, rather than a certain State's Attorney, to determine that a person has a  
10 public interest in a burial site; requiring a person requesting authorization to remove  
11 human remains to conduct a certain genealogical and historical study of the burial  
12 site; establishing that a person who enters land for certain purposes is responsible  
13 for ensuring that the person's conduct does not cause certain damage and that the  
14 person is liable to the property owner for any damage caused as a result of the  
15 person's access; requiring the owner of a certain burial site to consult with the  
16 Director of the Maryland Historical Trust on certain issues; establishing that certain  
17 advice provided by the Maryland Historical Trust is not binding on the owner;  
18 authorizing a county or municipal corporation to require the owner of a certain burial  
19 site to make arrangements for the repair or maintenance of the burial site under  
20 certain circumstances; requiring a county or municipal corporation to provide a  
21 certain notice to the owner of a certain burial site under certain circumstances;  
22 establishing that a certain notice may be satisfied in a certain manner under certain  
23 circumstances; authorizing a county or municipal corporation to maintain and  
24 preserve a certain burial site under certain circumstances; authorizing a county or  
25 municipal corporation to charge the owner of a burial site or impose a lien on a  
26 certain property to cover the cost of certain repairs; authorizing the Mayor and City  
27 Council of Baltimore City and the governing body of a county or municipal  
28 corporation to provide a property tax credit against the county or municipal  
29 corporation property tax imposed on certain improvements to real property related  
30 to burial sites; defining certain terms; providing for the application of a certain  
31 provision of this Act; and generally relating to burial sites.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, with amendments,  
2 Article – Business Regulation  
3 Section 5–505  
4 Annotated Code of Maryland  
5 (2015 Replacement Volume and 2017 Supplement)
- 6 BY repealing and reenacting, with amendments,  
7 Article – Criminal Law  
8 Section 10–401 and 10–402  
9 Annotated Code of Maryland  
10 (2012 Replacement Volume and 2017 Supplement)
- 11 BY repealing and reenacting, with amendments,  
12 Article – Real Property  
13 Section 14–121 and 14–122  
14 Annotated Code of Maryland  
15 (2015 Replacement Volume and 2017 Supplement)
- 16 BY adding to  
17 Article – Real Property  
18 Section 14–121.1  
19 Annotated Code of Maryland  
20 (2015 Replacement Volume and 2017 Supplement)
- 21 BY adding to  
22 Article – Tax – Property  
23 Section 9–261  
24 Annotated Code of Maryland  
25 (2012 Replacement Volume and 2017 Supplement)
- 26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
27 That the Laws of Maryland read as follows:
- 28 **Article – Business Regulation**
- 29 5–505.
- 30 (a) An action may be brought in accordance with the Maryland Rules and a court  
31 may pass a judgment for sale of a burial ground for another purpose if:
- 32 (1) the ground has been dedicated and used for burial;
- 33 (2) burial lots have been sold in the burial ground and deeds executed or  
34 certificates issued to buyers of the lots;
- 35 **(3) BASED ON A GENEALOGICAL AND HISTORICAL SEARCH FOR LOT**

1 OWNERS AND THEIR RELATIVES, ALL LOT OWNERS, THE LOT OWNERS' ASSIGNEES,  
2 IF ANY, AND DESCENDANTS OF THE LOT OWNERS HAVE BEEN NOTIFIED OF THE SALE;

3 ~~[(3)]~~ (4) the ground has ceased to be used for burial; and

4 ~~[(4)]~~ (5) it is desirable to dispose of the burial ground for another purpose.

5 (b) If the court is satisfied that it is expedient or would be in the interest of the  
6 parties to sell the burial ground, the court:

7 (1) may pass a judgment for the sale of the burial ground on the terms and  
8 notice the court sets;

9 (2) shall order that as much of the proceeds of the sale as necessary be used  
10 to pay the expenses of removing any human remains in the burial ground, buying burial  
11 lots in another burial ground, and reburying the remains; and

12 (3) shall distribute the remaining proceeds of the sale among the parties  
13 according to their interests.

14 (c) A judgment for the sale of a burial ground passes to the buyer of the burial  
15 ground the title to the burial ground free of the claims of:

16 (1) the owners of the burial ground; and

17 (2) the holders of burial lots.

18 **(D) THE COURT MAY REJECT THE SALE OF A BURIAL GROUND IF:**

19 **(1) A PARTY LISTED IN SUBSECTION (A)(3) OF THIS SECTION OBJECTS**  
20 **TO THE SALE; OR**

21 **(2) THE OFFICE OF CEMETERY OVERSIGHT HAS PROPOSED AN**  
22 **ALTERNATIVE USE FOR THE PROPERTY, SUCH AS A PARK, AN OPEN SPACE, OR A**  
23 **HISTORIC PROPERTY.**

24 **Article – Criminal Law**

25 10–401.

26 (a) In this subtitle the following words have the meanings indicated.

27 (b) (1) “Associated funerary object” means an item [of human manufacture or  
28 use] that is intentionally placed:

29 (i) with human remains at the time of interment in a burial site; or

1 (ii) after interment, as a part of a death ceremony of a culture,  
2 religion, or group.

3 (2) “Associated funerary object” includes a gravestone, monument, tomb,  
4 or other structure in or directly associated with a burial site.

5 (c) (1) “Burial site” means a natural or prepared physical location, whether  
6 originally located below, on, or above the surface of the earth, into which human remains  
7 or associated funerary objects are deposited as a part of a death ceremony of a culture,  
8 religion, or group.

9 (2) “Burial site” includes the human remains and associated funerary  
10 objects that result from a shipwreck or accident and are left intentionally to remain at the  
11 site.

12 **(D) “DESECRATE” MEANS TO VANDALIZE, DAMAGE, DIG UP, OR DESTROY**  
13 **WITHOUT AUTHORIZATION UNDER § 10-402 OF THIS SUBTITLE.**

14 **(E) “DISINTERMENT AUTHORITY” MEANS:**

15 **(1) IN CRIMINAL MATTERS, THE STATE’S ATTORNEY FOR THE**  
16 **COUNTY IN WHICH THE BURIAL SITE IS LOCATED; OR**

17 **(2) IN ALL OTHER CASES, THE OFFICE OF CEMETERY OVERSIGHT.**

18 **[(d)] (F) “Permanent cemetery” means a cemetery that is owned by:**

19 (1) a cemetery company regulated under Title 5 of the Business Regulation  
20 Article;

21 (2) a nonprofit organization; or

22 (3) the State.

23 10-402.

24 (a) Except as provided in subsections (b) and (f) of this section, a person may not:

25 **(1) remove or attempt to remove human remains from a burial site; OR**

26 **(2) DESECRATE HUMAN REMAINS.**

27 (b) Subject to subsection (c) of this section, the [State’s Attorney for a county]  
28 **DISINTERMENT AUTHORITY** may authorize in writing the removal of human remains  
29 from a burial site in the [State’s Attorney’s] **DISINTERMENT AUTHORITY’S** jurisdiction:

1 (1) to ascertain the cause of death of the person whose remains are to be  
2 removed;

3 (2) to determine whether the human remains were interred erroneously;

4 (3) for the purpose of reburial; or

5 (4) for medical or scientific examination or study allowed by law.

6 (c) (1) Except as provided in paragraph (4) of this subsection, the [State's  
7 Attorney for a county] **DISINTERMENT AUTHORITY** shall require a person who requests  
8 authorization to relocate permanently human remains from a burial site to publish a notice  
9 of the proposed relocation in a newspaper of general circulation in the county where the  
10 burial site is located.

11 (2) The notice shall be published in the newspaper one time.

12 (3) The notice shall contain:

13 (i) a statement that authorization from the [State's Attorney]  
14 **DISINTERMENT AUTHORITY** is being requested to remove human remains from a burial  
15 site;

16 (ii) the purpose for which the authorization is being requested;

17 (iii) the location of the burial site, including the tax map and parcel  
18 number or liber and folio number; and

19 (iv) all known pertinent information concerning the burial site,  
20 including the names of the persons whose human remains are interred in the burial site, if  
21 known.

22 (4) (i) The [State's Attorney] **DISINTERMENT AUTHORITY** may  
23 authorize the temporary relocation of human remains from a burial site for good cause,  
24 notwithstanding the notice requirements of this subsection.

25 (ii) If the person requesting the authorization subsequently intends  
26 to relocate the remains permanently, the person promptly shall publish notice as required  
27 under this subsection.

28 (5) The person requesting the authorization from the [State's Attorney]  
29 **DISINTERMENT AUTHORITY** shall pay the cost of publishing the notice.

30 (6) The [State's Attorney] **DISINTERMENT AUTHORITY** may authorize  
31 the removal of the human remains from the burial site after:

1 (i) receiving proof of the publication required under paragraph (1)  
2 of this subsection; and

3 (ii) 15 days after the date of publication.

4 (7) This subsection may not be construed to delay, prohibit, or otherwise  
5 limit the [State's Attorney's] **DISINTERMENT AUTHORITY'S** authorization for the removal  
6 of human remains from a burial site.

7 (8) For a known, but not necessarily documented, unmarked burial site,  
8 the person requesting authorization for the removal of human remains from the burial site:

9 (I) has the burden of proving by archaeological excavation or  
10 another acceptable method the precise location and boundaries of the burial site; **AND**

11 (II) **SHALL CONDUCT A GENEALOGICAL AND HISTORICAL STUDY**  
12 **OF THE BURIAL SITE.**

13 (d) (1) Any human remains that are removed from a burial site under this  
14 section shall be reinterred in:

15 (i) 1. a permanent cemetery that provides perpetual care; or

16 2. a place other than a permanent cemetery with the  
17 agreement of a person in interest as defined under § 14–121(a)(4) of the Real Property  
18 Article; and

19 (ii) in the presence of:

20 1. a mortician, professional cemeterian, or other individual  
21 qualified in the interment of human remains;

22 2. a minister, priest, or other religious leader; or

23 3. a trained anthropologist or archaeologist.

24 (2) The location of the final disposition and treatment of human remains  
25 that are removed from a burial site under this section shall be entered into the local burial  
26 sites inventory or, if no local burial sites inventory exists, into a record or inventory deemed  
27 appropriate by the [State's Attorney] **DISINTERMENT AUTHORITY** or the Maryland  
28 Historical Trust.

29 (e) This section may not be construed to:

30 (1) preempt the need for a permit required by the Maryland Department of

1 Health under § 4–215 of the Health – General Article to remove human remains from a  
2 burial site; or

3 (2) interfere with the normal operation and maintenance of a cemetery, as  
4 long as the operation and maintenance of the cemetery are performed in accordance with  
5 State law.

6 (f) (1) Subject to paragraphs (2) and (3) of this subsection, human remains or  
7 the remains of a decedent after cremation, as defined in § 5–508 of the Health – General  
8 Article, may be removed from a burial site within a permanent cemetery and reinterred in:

9 (i) the same burial site; or

10 (ii) another burial site within the boundary of the same permanent  
11 cemetery.

12 (2) The following persons, in the order of priority stated, may arrange for  
13 a reinterment of remains under paragraph (1) of this section:

14 (i) the surviving spouse or domestic partner of the decedent;

15 (ii) an adult child of the decedent;

16 (iii) a parent of the decedent;

17 (iv) an adult brother or sister of the decedent;

18 (v) a person acting as a representative of the decedent under a  
19 signed authorization of the decedent; or

20 (vi) the guardian of the person of the decedent at the time of the  
21 decedent's death, if one has been appointed.

22 (3) (i) The reinterment under paragraph (1) of this subsection may be  
23 done without the need for obtaining the authorization of the [State's Attorney]  
24 **DISINTERMENT AUTHORITY** under subsection (b) of this section or providing the notice  
25 required under subsection (c) of this section.

26 (ii) 1. A person who arranges for the reinterment of remains  
27 within a permanent cemetery under paragraph (1)(ii) of this subsection, within 30 days  
28 after the reinterment, shall publish a notice of the reinterment in a newspaper of general  
29 circulation in the county where the permanent cemetery is located.

30 2. The notice shall be published in the newspaper one time.

31 3. The notice shall contain:





1 (i) Is related by blood or marriage to the person interred in a burial  
2 site;

3 (ii) Is a domestic partner, as defined in § 1-101 of the Health –  
4 General Article, of a person interred in a burial site;

5 (iii) Has a cultural affiliation with the person interred in a burial site;  
6 or

7 (iv) Has an interest in a burial site that the [Office of the State’s  
8 Attorney for the county where the burial site is located] **OFFICE OF CEMETERY**  
9 **OVERSIGHT** recognizes is in the public interest after consultation with a local burial sites  
10 advisory board or, if such a board does not exist, the Maryland Historical Trust.

11 (b) Any person in interest may request the owner of a burial site or of the land  
12 encompassing a burial site that has been documented or recognized as a burial site by the  
13 public or any person in interest to grant reasonable access to the burial site for the purpose  
14 of restoring, maintaining, or viewing the burial site.

15 (c) (1) A person requesting access to a burial site under subsection (b) or (d) of  
16 this section may execute an agreement with the owner of the burial site or of the land  
17 encompassing the burial site using a form similar to the form below:

18 “Permission to Enter

19 I hereby grant the person named below permission to enter my property, subject to  
20 the terms of the agreement, on the following dates:

21 Signed.....

22 (Landowner)

23 Agreement

24 In return for the privilege of entering on the private property for the purpose of  
25 restoring, maintaining, or viewing the burial site or transporting human remains to the  
26 burial site, I agree to adhere to every law, observe every safety precaution and practice,  
27 take every precaution against fire, and assume all responsibility and liability for my person  
28 and my property, while on the landowner’s property.

29 Signed”

30 (2) The owner of the burial site or of the land encompassing the burial site  
31 [may] **SHALL** grant access to the burial site in accordance with the terms of the agreement  
32 signed under paragraph (1) of this subsection.

1 (d) In addition to the provisions of subsection (b) of this section, if burials are still  
2 taking place at a burial site, any person who is related by blood or marriage, heir, appointed  
3 representative, or any other person in interest may request the owner of the land  
4 encompassing the burial site to grant reasonable access to the burial site for the purpose of  
5 transporting human remains to the burial site to inter the remains of a person for whose  
6 burial the site is dedicated, if access has not been provided in a covenant or deed of record  
7 describing the metes and bounds of the burial site.

8 (e) Except for willful or malicious acts or omissions, the owner of a burial site or  
9 of the land encompassing a burial site who allows persons to enter or go on the land for the  
10 purposes provided in subsections (b) and (d) of this section is not liable for damages in a  
11 civil action to a person who enters on the land for injury to person or property.

12 **(F) A PERSON WHO ENTERS LAND FOR THE PURPOSES PROVIDED IN**  
13 **SUBSECTIONS (B) AND (D) OF THIS SECTION SHALL BE RESPONSIBLE FOR ENSURING**  
14 **THAT THE PERSON'S CONDUCT DOES NOT DAMAGE THE LAND, THE CEMETERY, OR**  
15 **THE GRAVESITES, AND SHALL BE LIABLE TO THE PROPERTY OWNER FOR ANY**  
16 **DAMAGE CAUSED AS A RESULT OF THE PERSON'S ACCESS.**

17 **[(f)] (G)** (1) An owner of a burial site, a person who is related by blood or  
18 marriage to the person interred in a burial site, heir, appointed representative, or any other  
19 person in interest, or any other person **[may] SHALL** report the location of a burial site to  
20 the supervisor of assessments for a county, together with supporting documentation  
21 concerning the location and nature of the burial site.

22 (2) The supervisor of assessments for a county **[may] SHALL** note the  
23 presence of a burial site on a parcel on the county tax maps maintained under § 2–213 of  
24 the Tax – Property Article.

25 **[(g)] (H)** Nothing in this section may be construed to interfere with the normal  
26 operation and maintenance of a public or private cemetery being operated in accordance  
27 with State law.

28 **14-121.1.**

29 **(A) IN THIS SECTION, "BURIAL SITE" HAS THE MEANING STATED IN §**  
30 **14-121 OF THIS SUBTITLE.**

31 **(B) AN OWNER OF A BURIAL SITE OR OF THE LAND ENCOMPASSING A BURIAL**  
32 **SITE THAT HAS BEEN IN EXISTENCE FOR MORE THAN 50 YEARS AND IN WHICH THE**  
33 **MAJORITY OF THE PERSONS INTERRED IN THE BURIAL SITE HAVE BEEN INTERRED**  
34 **FOR MORE THAN 50 YEARS SHALL CONSULT WITH THE DIRECTOR OF THE**  
35 **MARYLAND HISTORICAL TRUST ABOUT THE PROPER TREATMENT OF MARKERS,**  
36 **HUMAN REMAINS, AND THE ENVIRONMENT SURROUNDING THE BURIAL SITE.**

1           **(C) ADVICE PROVIDED BY THE MARYLAND HISTORICAL TRUST UNDER THIS**  
2 **SECTION IS NOT BINDING ON THE OWNER OF THE BURIAL SITE.**

3 14–122.

4           (a) In this section, “burial site” means any natural or prepared physical location,  
5 whether originally below, on, or above the surface of the earth into which human remains  
6 are deposited as a part of a death rite or ceremony of any culture, religion, or group.

7           (b) **(1)** Any county or municipal corporation that has within its jurisdiction a  
8 burial site in need of repair or maintenance [may, upon] **MAY:**

9                               **(I)** **AT** the request of the owner or with permission of the owner of  
10 the burial site in need of repair or maintenance, maintain and preserve the burial site for  
11 the owner; **OR**

12                               **(II)** **REQUIRE THE OWNER OF THE BURIAL SITE TO MAKE**  
13 **ARRANGEMENTS FOR THE REPAIR OR MAINTENANCE OF THE BURIAL SITE, IN**  
14 **ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.**

15           **(2) (I)** **A COUNTY OR MUNICIPAL CORPORATION THAT REQUIRES**  
16 **THE OWNER OF A BURIAL SITE TO MAKE ARRANGEMENTS FOR THE REPAIR OR**  
17 **MAINTENANCE OF THE BURIAL SITE SHALL SEND NOTICE TO THE OWNER STATING**  
18 **THAT:**

19                               **1. THE COUNTY OR MUNICIPAL CORPORATION HAS**  
20 **DETERMINED THAT THE BURIAL SITE IS IN NEED OF REPAIR OR MAINTENANCE;**

21                               **2. THE OWNER IS REQUIRED TO NOTIFY THE COUNTY OR**  
22 **MUNICIPAL CORPORATION OF THE OWNER’S ARRANGEMENTS FOR THE REPAIR OR**  
23 **MAINTENANCE OF THE BURIAL SITE; AND**

24                               **3. IF THE OWNER DOES NOT RESPOND AFTER TWO**  
25 **NOTICES, THE COUNTY OR MUNICIPAL CORPORATION MAY:**

26                                       **A. PERFORM THE REPAIR OR MAINTENANCE; AND**

27                                       **B. CHARGE THE OWNER OF THE BURIAL SITE OR IMPOSE**  
28 **A LIEN ON THE PROPERTY TO COVER THE COST OF THE REPAIR OR MAINTENANCE.**

29                               **(II)** **IF A BURIAL SITE IS ABANDONED OR THE OWNER OF A**  
30 **BURIAL SITE IS UNKNOWN OR CANNOT BE LOCATED, THE NOTICE REQUIRED UNDER**  
31 **SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY BE SATISFIED BY AFFIXING THE**  
32 **NOTICE CONSPICUOUSLY ON THE PROPERTY.**

1 (c) In order to maintain and preserve a burial site or to repair or restore fences,  
2 tombs, monuments, or other structures located in a burial site, a county or municipal  
3 corporation may:

4 (1) Appropriate money and solicit donations from individuals or public or  
5 private corporations;

6 (2) Provide incentives for charitable organizations or community groups to  
7 donate their services; [and]

8 (3) Develop a community service program through which individuals  
9 required to perform community service hours under a sentence of a court or students may  
10 satisfy community service requirements or volunteer their services; AND

11 (4) **IN ACCORDANCE WITH SUBSECTION (B)(2) OF THIS SECTION,**  
12 **CHARGE THE OWNER OF THE BURIAL SITE OR IMPOSE A LIEN ON THE PROPERTY TO**  
13 **COVER THE COST OF THE REPAIRS.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
15 as follows:

16 **Article – Tax – Property**

17 **9–261.**

18 **THE MAYOR AND CITY COUNCIL OF BALTIMORE CITY OR THE GOVERNING**  
19 **BODY OF A COUNTY OR OF A MUNICIPAL CORPORATION MAY GRANT, BY LAW, A**  
20 **PROPERTY TAX CREDIT AGAINST THE COUNTY OR MUNICIPAL CORPORATION**  
21 **PROPERTY TAX IMPOSED ON AN IMPROVEMENT OF REAL PROPERTY THAT**  
22 **SUBSTANTIATES, DEMARCATES, COMMEMORATES, OR CELEBRATES A BURIAL**  
23 **GROUND.**

24 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall be  
25 applicable to all taxable years beginning after June 30, 2018.

26 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
27 1, 2018.