State of Illinois
Illinois Historic Preservation Agency

Stones and Statutes:
Laws Governing Illinois Cemeteries

Illinois Historic
Preservation Agency

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Stones and Statutes: **Laws Governing Illinois Cemeteries**

The first Illinois laws protecting historically significant cemeteries were enacted in 1851. Since that time the state legislature has passed a number of laws governing the management of public cemeteries, including sales and ownership, the creation of local cemetery authorities, burial places of Illinois soldiers and sailors, and the care and maintenance of cemeteries. Those laws encourage local government and private organizations to maintain, regulate, and protect cemeteries. Also established by law are provisions for creating a local cemetery authority when none exists.

Responsibility for cemeteries clearly rests with local governments. Except for certain cemeteries designated historic landmarks, the State of Illinois appropriates no money for the care and maintenance of cemeteries.

Why preserve or protect cemeteries? They are memorials to the past that offer a unique view of our history, culture, and way of life. Their existence adds much to our understanding of the history of Illinois and its people.

Defining Terms

What do the legal terms mean in plain English?

It is important to define the commonly used terms in the **Illinois Compiled Statutes** (ILCS).

A ***cemetery*** is any area used for the interment of human remains, including structures such as columbariums, mausoleums, and crypts (525 ILCS 30/3.03; 760 ILCS 100).

Abandonment, or the assumption of abandonment, of a cemetery occurs when no interments have been made for thirty years and the cemetery has been exempt from real estate-taxes during that period. A cemetery is also considered abandoned when there is no cemetery authority to care for the land (60 ILCS 1/130-5; 525 ILCS 30/3.01; 765 ILCS 835/9-14).

Care refers to the maintenance of cemetery grounds and all structures within its boundaries, the equipment used for its care, the salary of those employed, and the recording of interments and owners of lots (760 ILCS 100/2).

Care funds are any land donation, personal gift, contribution or bequest accepted by a cemetery authority for the care of a cemetery (760 ILCS 100/2).

Cemetery authority is the legally authorized owner or operator of a cemetery. The cemetery authority may be an individual or an organization with some members serving as trustees. Trustees of a cemetery association sometimes hire a cemetery caretaker (525 ILCS 30/3.04; 760 ILCS 100/2).

Family burial ground is any cemetery that restricts the interment to a group of persons related by blood or marriage (760 ILCS 100/2).

Fraternal cemetery is a cemetery owned by a fraternal organization that limits its interments to members (760 ILCS 100/2).

This is a well-maintained municipal cemetery in a park-like setting. Woodland Cemetery, Quincy, Adams County

Cemeteries contain both above and below ground burials.Oak Hill Cemetary, Watseka, Iroquois County

Grave artifacts are any item of human manufacture or use that is associated with the human skeletal remains in an unregistered grave (20 ILCS 3440/1c).

Grave marker is any tomb, monument, stone, ornament, prehistoric mound, or other item of human manufacture that is associated with an unregistered grave (20 ILCS 3440/1d).

Municipal cemetery is a cemetery owned or managed by a city, village, township, or county (760 ILCS 100/2).

Registered exempt cemeteries are **not** licensed. They are owned by a religious organization, private family, or municipality (local, township or city) (760 ILCS 100).

Registered licensed cemeteries are those that are active, are privately owned, are for profit, and sell plots on a pre-need basis (760 ILCS 100/7).

Religious cemetery is one owned and operated by any church, religious society, or denomination (760 ILCS 100/2).

Privately operated cemetery is any burial ground other than those defined as fraternal, municipal, family, or religious (760 ILCS 100/2).

Skeletal analyst is an individual with either a master's degree or Ph.D. specializing in the study of human osteology from an accredited institution. They must have a minimum of six months of supervised analytical training or experience in the identification, analysis, and interpretation of human skeletal remains to become certified with the Illinois Historic Preservation Agency (17 IAC 4170).

Unregistered grave is defined as any grave or location where a human body has been buried or deposited (20 ILCS 3440).

Federal Programs

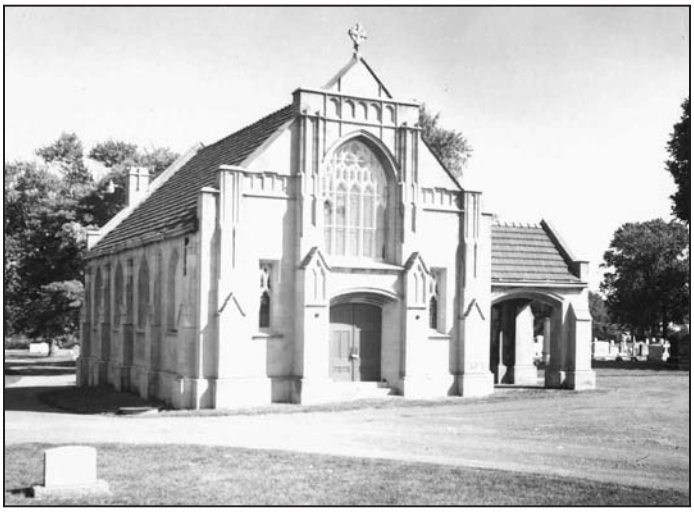
What role does the federal government have in cemetery care?

Section 106 of the National Historic Preservation Act of 1966 was established to protect historic properties and cultural resources from unnecessary harm due to progress and change.

In Illinois, the Illinois Historic Preservation Agency's Preservation Services Division is designated the State Historic Preservation Office (SHPO). As the SHPO, division staff members administer the federal historic preservation program in Illinois. The Preservation Services Division oversees surveys and inventories of Illinois' historic properties and nominates places to the National Register of Historic Places, which is maintained by the United States Department of the Interior. The State Historic Preservation Office also advises and assists local governments in planning for the preservation and management of cultural resources, including cemeteries.

The review and compliance section monitors federal projects for their effect on historic places and cultural resources. Sometimes a federally funded highway route includes a cemetery in its right-of-way. Through the review and compliance process staff members may

Prehistoric burial mounds, such as these, are protected by the Human Skeletal Remains Protection Act.



Goddard Memorial Chapel, Rose Hill Cemetery, Marion, Williamson County, was listed in the National Register of Historic Places in 1986.

recommend rerouting the proposed road or relocating the cemetery.

The Illinois Historic Preservation Agency also oversees the National Register program in Illinois. Generally, a grave or cemetery is not eligible for the National Register except in the following cases:

- It is the grave of a historical figure of outstanding importance and no other appropriate site or building directly associated with the individual's productive life exists
- It is a cemetery that derives its primary significance from graves of persons of transcendent importance
- The cemetery is distinguished by age, distinctive design feature, or its association with historical events

For additional information on the National Register of Historic Places and its association with Illinois cemeteries, write: National Register Coordinator, Illinois Historic Preservation Agency, One Old State Capitol Plaza, Springfield, Illinois 62701.

In 1935 the Illinois legislature, under the provisions of federal law, established an alphabetized "roll of honor" for all veterans that include their place of burial. The rolls are maintained at the U. S. Department of Veterans Affairs offices throughout the state. The federal government is obligated to pay for the grave markers (330 ILCS 110).

State Government Assistance

What is the state's role in cemetery care and maintenance?

A number of state government organizations help to preserve and protect cemeteries and promote public awareness of their cultural significance.

The ***State Comptroller's Office*** administers the Illinois Cemetery Care Act (760 ILCS 100), which preserves and protects cemeteries registered with the office's Cemetery Care and Burial Trust Department. This Act, as amended in 1948, mandates the financial and maintenance responsibilities of cemetery owners and operators. Cemeteries registered with the State Comptroller's Office fall under one of two categories, ***licensed*** or ***exempt***. Licensed cemeteries are for-profit groups and, therefore, are under the jurisdiction of the State Comptroller's Office. They are required to file an annual report. The Comptroller's Office focuses on licensed cemeteries to protect the consumer from fraud. ***Exempt cemeteries*** are owned by non-profit groups. The Comptroller's Office does not have legal jurisdiction over exempt cemeteries.

Registering a cemetery is an inexpensive and simple procedure. The fee is just $5. The application includes a number of questions concerning the name, location, and type of cemetery (religious, fraternal, family, or public burial site). Anyone may complete the application, but it must carry the signature of the cemetery owner. Under provisions of the Cemetery Care Act, the owner is liable for the care of lots, graves, niches, mausoleums, memorials, and markers. The Cemetery Care Act protects consumers who purchase a grave or family plot with a provision of perpetual care. The cemetery owner is required to protect the consumer's investment by maintaining the cemetery grounds and repairing stones when needed.

For additional information on the Illinois Cemetery Care Act and how to register a cemetery, write: Illinois Office of the Comptroller, Cemetery Care and Burial Trust Department, 100 West Randolph Street, Suite 15-500, Chicago, Illinois 60601. Application forms are also available on-line at www.ioc.state.il.us/office/ccbt. Cemetery maintenance is typically handled at the local level. Public officials can be encouraged to allocate funds for cemetery restoration and maintenance. Local individuals or groups can organize an association under provisions of the Illinois Cemetery Care Act, which provides for the establishment of cemetery care trust funds.

The ***Illinois Historic Preservation Agency*** (IHPA) administers the Human Skeletal Remains Protection Act (20 ILCS 3440). This Act, passed in 1989, protects all unregistered graves, graves artifacts, and grave markers (including prehistoric burial mounds) that are over 100 years old and are not located in a cemetery that is registered with the State Comptroller's Office under the Cemetery Care Act. The Human Skeletal Remains Protection Act offers protection from all disturbances including, but not limited to, excavation (including cultivation), vandalism, removal, defacement, or desecration in any way (20 ILCS 3440/1). It is the Agency's preference that graves or cemeteries be undisturbed and preserved in place.

Occasionally an unmarked grave or cemetery is disturbed, either by an accidental discovery or by a planned undertaking. If human remains or graves are accidentally uncovered, then the discovery must be reported to the

county coroner within 48 hours. If the coroner's office determines that the case does not warrant any further investigation and the remains appear to be over 100 years old, then jurisdiction is passed to the IHPA. If the remains are believed to be less than 100 years old, then the coroner maintains jurisdiction. If a planned undertaking will adversely impact an unregistered grave or cemetery, then a permit must be obtained from the IHPA prior to any development. Professional archaeologists and ***skeletal analysts*** are required to lead the archaeological investigation.

It is unlawful for any person or agent representing an individual to knowingly disturb or to allow the disturbance of human skeletal remains, grave artifacts, or grave markers without first obtaining a permit from the IHPA. Any violation of this Act is a Class A misdemeanor. Violators can face imprisonment of up to six months and a fine not to exceed $10,000. Any subsequent violation is a Class 4 felony (20 ILCS 3440/3-11).

Under this law, all human skeletal remains, grave artifacts, and grave markers in unregistered graves are under the jurisdiction of the IHPA and are held in trust for the people of the State. All materials collected under this Act will be maintained, with dignity and respect, at the Illinois State Museum, Springfield (20 ILCS 3440/14).

In some instances, unregistered graves are identified with a grave marker. The administrative codes of the Human Skeletal Remains Protection Act (17 IAC 4170) state that if direct lineal descendents can be identified, then they may submit a written request to the IHPA for the return of the remains, grave artifacts, and grave marker. Descendents must demonstrate their direct lineal descent from the deceased through family genealogical records. The family must agree to reburial of the remains and artifacts within a set period of time and must provide notarized proof that the reburial has occurred.

The Human Skeletal Remains Protection Act can be found at www.ilga.gov/legislature. Select "Illinois Complied Statutes," then Chapter 20, and finally 20 ILCS 3440.

The complete administrative codes can be found at www.ilga.gov/legislature. Under the category of Rules and Regulations select "Administrative Rules", then Title 17, and finally Part 4170.

The Illinois Nature Preserves Commission protects cemeteries contained within the boundaries of a nature preserve. Each nature preserve cemetery is regulated by the Illinois Nature Preserves Commission (525 ILCS 30). The owner of the land and cemetery retains custody, but maintains the area in its natural condition for scientific research, aesthetic enjoyment, and habitat for plant and animal species. Maintenance of these cemeteries follows acceptable management plans developed in consultation with the Illinois Nature Preserves Commission.

For additional information on nature preserves, their designation, and regulations, write: Illinois Nature Preserves Commission, Illinois Department of Natural Resources, One Natural Resources Way, Springfield, Illinois 62702.

A pioneer plot in an Illinois Nature Preserve – Prospect Cemetery, Paxton, Ford County.

County, Township, or Municipality Obligation

What is the county, township, or municipality obligation?

If a cemetery is not managed by an association, a cemetery maintenance district can be established by petitioning the county commission or township clerk for a tax levy to control and maintain a burial site.

Cemetery maintenance districts are provided for by a law enacted in July 1957 that places responsibility for cemetery care on county governments. First, residents must support the proposal with a petition. Next, officials within the proposed boundaries of the maintenance district must be notified and a hearing conducted in the circuit court. A referendum must be held in the next public election, and if it is successful, the county court grants the cemetery maintenance district. Within that district, the county may recondition or restore any

neglected or abandoned publicly owned cemetery and provide for its continued maintenance (760 ILCS 100; 50 ILCS 610).

In addition to a special tax, any county board may set aside funds to clean and maintain any neglected grave or cemetery in its jurisdiction, even if it is not owned by the county (55 ILCS 70).

Voters may also request a county soldiers and sailors burial fund and memorial. Legal voters may petition the county board for an annual tax to be levied for establishing and maintaining such a fund. Again, it is a question put to the electorate during a general election. If the residents of a county petition for the establishment of a memorial to their soldiers and sailors, or contribute any money, it is the responsibility of the county commissioners to appropriate money to maintain the memorial (55 ILCS 5/5-28).

In July 1925 the Illinois General Assembly enacted a law providing for the restoration and reconditioning of neglected graves and cemeteries. If the cemetery is within a county, township, or city, an appropriate tax may be levied to help maintain and restore the cemetery and grave markers (55 ILCS 70; 60 ILCS 1/130-5; 65 ILCS 5/11-49 & /11-50).

City cemeteries must be located less than one mile outside the city limits. The city authority may acquire land or an existing cemetery specifically for burial purposes and sell lots to recover the cost (65 ILCS 5/11-49 and 5/11-52.1).

In accepting a burial site, the city authority becomes responsible for the maintenance of the cemetery. Two or more cities, villages, or townships may jointly maintain a cemetery. If a trust fund for maintenance is established, a city council or board of trustees must oversee expenditures related to the cemetery's care (60 ILCS 135).

If a burial site is assumed abandoned, a cemetery authority may file with the circuit court a petition declaring the cemetery abandoned. The petition must include a description of the cemetery's location, the name of its owner or next of kin, and a statement of the cemetery's condition. If an owner responds to the petition, the assumption of abandonment no longer exists. If no owner appears after one year, the right to sell lots is given to the petitioners or cemetery authority. In the event that the owner does appear, all expenses incurred by the cemetery authority are reimbursed and the owner is held liable for the future care and maintenance of the cemetery (765 ILCS 835/9; 60 ILCS 1/130).

How can a cemetery authority discourage vandals and encourage responsible visitors?

Vandalism takes many forms – discarded beer cans and trash, overturned monuments, graffiti, firearm damage, and so on. All are considered Class C misdemeanors. Operating motor vehicles in undesignated areas and at excessive speeds may also cause damage. Those violating the speed limit may be found guilty of a petty offense and fined. Cemetery associations may legally appoint police officers to protect

Cemeteries within a cemetery maintenance district my be reconditioned or restored with funds provided by the county government.

Under Illinois law, a county board can provide funds to clean and maintain a grave or cemetery, even if it is not owned by the county.

and preserve cemeteries. They have the same power to arrest persons in violation of rules and regulations of the cemetery as any city marshal or police officer (765 ILCS 835/1-3; 60 ILCS 1/135-60).

Lights, fences, and signs may deter some vandals. Signs may inform visitors of the times that the cemetery is open, where public facilities are located, and outline rules governing the maintenance and care. Some signs inform people of their rights should they violate cemetery regulations. Signs tend to heighten public awareness and establish the cemetery authority's commitment to maintaining a respectable environment.

Lighting may discourage vandals, yet that may be impossible in some cases. City lights or floodlights on an office or mausoleum may deter some vandals because they can be observed clearly from a safe distance. A conscientious citizen could, without risk, call the police to report the vandalism.

Fences around a burial site help to keep large animals out and also define the cemetery boundaries. Two types of fencing are especially desirable – open-weave chain link or rails. Neither obstructs the view of the cemetery, which makes it easier to observe from a distance.

Want to know more about a local cemetery?

Contact your local historical or genealogical society, which may inventory or may have already inventoried each marker. Those records indicate which gravestones were visible when the inventory was made. Research into cemetery records and obituary notices should provide clues to the locations of obscured stones.

Encourage volunteers by offering to train them in proper preservation techniques. Please remember that anyone interested in uncovering and repairing buried markers from an unregistered grave or cemetery must first obtain a permit from the Illinois Historic Preservation Agency. Volunteers must be trained in the correct and sometimes tedious task of uncovering buried markers and repairing grave markers. Contact the Illinois Historic Preservation Agency for gravestone preservation training opportunities.

A local civic group or youth organizations – Boy Scouts or Girl Scouts – may contribute volunteers to maintain a cemetery.

Contact local news agencies (television, radio, or newspaper) and your community service department. They may be willing to give your recruitment efforts a boost by providing free publicity.

Public support can also be generated by the Illinois State Historical Society's marker program. That program oversees the erection of a historical marker to memorialize an event or person. The markers program may involve your local historical or genealogical society, a civic group, or anyone interested in the area's history. A historical marker may expand on the facts engraved on a grave marker, providing a brief biography of a significant local figure. For guidelines and an application, write: Illinois

This notice presents a fair warning to visitors of this Sangamon County cemetery.

Historical markers memorialize an important person or event. The Illinois State Historical Society administers Illinois' marker program.

State Historical Society, Historical Markers Program, 210 ½ South Sixth Street, Suite 200, Springfield, Illinois 62701 or visit their website for an application: www.historyillinois.org/Markers/markers.htm.

For more information

Whom can I contact for more information?

Questions dealing with cemeteries and cemetery laws should be directed to: Illinois Historic Preservation Agency, Division of Preservation Services, One Old State Capitol Plaza, Springfield, Illinois 62701 or phone: (217) 782-4836.

Concerns for cemeteries affected by projects involving federal funds should be expressed to: Archaeological Review and Compliance Section, Illinois Historic Preservation Agency, One Old State Capitol Plaza, Springfield, Illinois 62701 or phone (217) 782-4836.

If a cemetery contains a prehistoric burial mound, or if a prehistoric burial mound is being disturbed, contact: Archaeology Section, Illinois Historic Preservation Agency, One Old State Capitol Plaza, Springfield, Illinois 62701 or phone (217) 782-4836.

If you wish to erect a historical marker, write: Illinois State Historical Society, Marker's Program, 210 ½ South Sixth Street, Suite 200, Springfield, Illinois 62701, phone: (217) 525-2781, or visit the web site at www.historyillinois.org/Markers/markers.htm.

To register a cemetery, write: Illinois Office of the Comptroller, Cemetery Care and Burial Trust Department, 100 W. Randolph, Suite 15-500, Chicago, Illinois 60601 or phone (toll free hotline) (877) 203-3401 or in Chicago (312) 814-2451. Application forms are also available on-line at www.ioc.state.il.us/office/ccbt.

Concerns dealing with the burial of Illinois war veterans should be addressed to: Illinois Department of Veterans Affairs, 833 South Spring Street, P. O. Box 19432, Springfield, Illinois 62794, or phone toll free: 1-800-437-9824 or in Springfield (217) 782-6641, or on-line at www.state.il.us/agency/dva.

For information on historic cemeteries as nature preserves, write: Illinois Nature Preserves Commission, Illinois Department of Natural Resources, One Natural Resources Way, Springfield, Illinois 62702 or phone: (217) 524-2415 or visit the web site for additional information: www.dnr.state.il.us/inpc.

The following is a partial list of state and local cemetery and burial laws. This list includes laws that apply to both registered and unregistered and/or unmarked cemeteries and/or graves. This does not include any federal cemetery or burial laws (most of which will, in general, apply only to federally owned land).

STATEWIDE **LAWS**

20 ILCS 3440	Human Skeletal Remains Protection Act (**this is the only Act administered by the Illinois Historic Preservation Agency)*
330 ILCS 110	Veterans Burial Places Act
410 ILCS 5	Burial of Dead Bodies Act
410 ILCS 18	Crematory Regulation Act
525 ILCS 30/3.01, 30/3.03, 30/3.04, 30/11, 30/12	Illinois Natural Areas Preservation Act
720 ILCS 5/21	Criminal Offenses – Damage and Trespass to Property
760 ILCS 100	Cemetery Care Act (*administered by the Illinois State Comptroller's Office*)
765 ILCS 820	Cemetery Land Ownership and Transfer Act
765 ILCS 835	Cemetery Protection Act
805 ILCS 320	Cemetery Association Act

COUNTY **LAWS**

55 ILCS 65	County Cemetery Care Act
55 ILCS 70	Grave and Cemetery Restoration Act
60 ILCS 1/30-60	Public Graveyards
60 ILCS 1/130	Township Cemeteries
60 ILCS 1/133	Public Graveyards
60 ILCS 1/135	Joint Township Cemeteries

MUNICIPALITY **LAWS**

65 ILCS 5/11-49	General Cemetery Power and Tax for Rehabilitation
65 ILCS 5/11-50	Tax for Restoration of Neglected Cemeteries

These laws can be found on the web at www.ilga.gov/legislation. Then select "**Illinois Compiled Statutes.**"

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