

8A:3-14, 8A:3-14.1, 8A:4-3

LEGISLATIVE HISTORY CHECKLIST

(Mausoleum Construction - jurisdiction -  
Transfer from Environmental Protection  
to Community Affairs)

MJSA 8A:3-14, 8A:3-14.1, 8A:4-3

LAWS OF 1979

CHAPTER 255

Bill No. A1491

Sponsor(s) Schuck

Date Introduced June 12, 1978

Committee: Assembly State Gov't, Federal & Interstate Relations & Veterans Affairs

Senate State Gov't, Federal & Interstate Relations & Veterans Affairs

Amended during passage Yes

~~Yes~~ Amendments during passage  
denoted by asterisks

Date of Passage: Assembly Jan. 18, 1979

Senate Sept. 10, 1979

Date of approval Dec. 21, 1979

Following statements are attached if available:

Sponsor statement Yes ~~Yes~~

Committee Statement: Assembly Yes ~~Yes~~

Senate Yes ~~Yes~~

Fiscal Note Yes ~~Yes~~

Veto message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

8/1/78

12-21-79

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## ASSEMBLY, No. 1491

## STATE OF NEW JERSEY

INTRODUCED JUNE 12, 1978

By Assemblyman SCHUCK

Referred to Committee on State Government, Federal and  
Interstate Relations and Veterans Affairs

AN ACT concerning cemeteries, amending N. J. S. 8A:3-14 and  
N. J. S. 8A:4-3, and supplementing Title 8A of the New Jersey  
Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. N. J. S. 8A:3-14 is amended to read as follows:

2 8A:3-14. a. No person shall build, construct or erect, wholly or  
3 partially above or below the surface of the ground, a public  
4 mausoleum, vault, crypt or other structure intended to hold or  
5 contain dead bodies, without obtaining a \***building**\* permit from  
6 the **building inspector** *construction official* of the municipality in  
7 which it is proposed to build or erect said structure. A denial or  
8 failure to issue said permit shall be reviewable *by the Board of*  
9 *Appeals established pursuant to the "State Uniform Construction*  
10 *Code Act" (P. L. 1975, c. 117; C. 52:27D-119 et seq.), and there-*  
11 *after\** in the Superior Court by a proceeding in lieu of prerogative  
11A writ. The provisions of this section shall have application to every  
11B cemetery company, religious corporation and religious society.

12 b. Full detailed plans and specifications of said structure shall  
13 be presented to the State Department of **Environmental Protec-**  
14 **tion** *Community Affairs* for its examination and approval before  
15 the commencement of the erection thereof. Before approving the  
16 plans and specifications the State Department of **Environmental**  
17 **Protection** *Community Affairs* shall be satisfied that the  
18 mausoleum proposed to be constructed can be operated and  
19 maintained without constituting a hazard to public health or safety.

20 The approval of the plans and specifications by the State Depart-  
21 ment of **Environmental Protection** *Community Affairs* shall be  
22 evidenced by a certificate in writing, properly signed, which

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

23 certificate with the detailed plans and specifications so approved  
 24 shall, before work is begun on the structure, be filed in the office  
 25 of the \***clerk of the county**)\* *\*municipal enforcing agency\**  
 26 wherein the structure is to be erected and there remain as a public  
 26A record.

27 c. The process of construction and erection of the structure shall  
 28 be at all times under the supervision of the said **building inspec-**  
 29 **tor**] *construction official*, whose duty it shall be to see that the  
 30 approved plans and specifications are complied with in every  
 31 particular as to kind, quality, character and quantity of all  
 32 materials. No departure or deviation from the original plans and  
 33 specifications shall be permitted, except upon the approval of the  
 34 State Department of **Environmental Protection**] *Community*  
 35 *Affairs* evidenced and filed in like manner and form as the approval  
 36 of the original plans and specifications.

37 d. No structure erected under the provisions of this section shall  
 38 be used for the purpose of interring or depositing therein any dead  
 39 body until there shall have been obtained a certificate signed by  
 40 the **building inspector**] *construction official* of the municipality  
 41 in which the structure shall have been erected, which certificate  
 42 shall show that the plans and specifications as filed have been com-  
 43 plied with fully \***in every particular**, nor until the certificate shall  
 44 be filed with the clerk of the county wherein the structure is  
 44A located]\*.

45 e. No structure constructed or erected under the provisions of  
 46 this section shall be used for the interment or depositing therein  
 47 of a dead body until a trust fund shall have been established and  
 48 set apart in accordance with the laws regulating trust funds in  
 49 this State, of not less than 10% of the total cost of the structure.  
 50 The interest on the trust fund, and the interest only, shall be used  
 51 for the perpetuation of the structure. This provision shall not  
 52 apply to private mausoleums or temporary receiving vaults.

53 f. This section shall not apply to a public mausoleum, vault,  
 54 crypt or other structure intended to hold or contain dead bodies,  
 55 constructed or erected or in the course of construction or erection  
 56 prior to March 21, 1916.

57 g. Any officer, manager or director of a cemetery \***willfully**)\*  
 58 failing to comply with the provisions of this section shall be  
 59 personally liable \***therefore and shall be liable to a penalty of**  
 60 **\$1,000.00**)\* *\*to a penalty which shall be levied and collected by the*  
 61 *commissioner or the municipality, as the case may be, in accordance*  
 62 *with the applicable provisions of the "State Uniform Construction*  
 63 *Code Act"*.\*

1 2. (New section) The Department of Community Affairs shall  
 2 within 90 days of the effective date of this act promulgate rules and  
 3 regulations regulating the construction of public mausoleums or  
 4 columbariums. \***[Such rules and regulations may include being**  
 5 **height limitations where appropriate and provide for a reasonable**  
 6 **distance for said structures from any dwelling or dwellings immedi-**  
 7 **ately adjacent to the lands of the said cemetery company.]** \* *To*  
 8 *the extent applicable, such rules and regulations shall be the*  
 9 *standards adopted in the subcodes of the Uniform Construction*  
 10 *Code, or other national model code or standard. If the commis-*  
 11 *sioner shall, after a public hearing, determine that such do not*  
 12 *adequately protect the public interest, the commissioner may*  
 13 *promulgate additional standards.\* Any local ordinance \*\*\***[\*\*ex-***  
 14 *cept the municipal zoning ordinances\*\*]*\*\*\* heretofore or hereafter  
 15 enacted regulating the construction of \*\*\***[any or]**\*\*\* said struc-  
 16 tures shall be of no force or effect\*\*\*; *provided, however, that any*  
 17 *municipality may enact zoning ordinances which provide for rea-*  
 18 *sonable height and setback requirements in keeping with such*  
 19 *standards established for property immediately abutting a ceme-*  
 20 *tery\*\*\*. \*\*Any rule or regulation promulgated by the department*  
 21 *contrary to the provisions of \*\*\***[a municipality's]**\*\*\* \*\*\*such\*\*\**  
 22 *zoning ordinance shall not be enforceable within said municipal-*  
 23 *ity.\*\**

1 3. N. J. S. 8A:4-3 is amended to read as follows:

2 8A:4-3. Any cemetery company incorporated after the effective  
 3 date of this act shall, as a condition for the issuance to it of a  
 4 certificate of authority to operate a cemetery, cause to be deposited  
 5 in a banking institution authorized by law to maintain trust  
 6 accounts and having and maintaining a principal place of business  
 7 within this State, the sum of \$25,000.00 in trust, and shall designate  
 8 such banking institution as trustee of the fund so deposited;  
 9 *provided, however, that any cemetery company operating a crema-*  
 10 *tory physically separated from a cemetery and functioning exclu-*  
 11 *sively as a crematory shall not be required to provide for the*  
 12 *\$25,000.00 initial trust fund deposit. Any such cemetery company*  
 13 *operating a crematory wholly independent and physically separated*  
 14 *from any cemetery which has heretofore made such a \$25,000.00*  
 15 *initial trust deposit may make application to the New Jersey*  
 16 *Cemetery Board for an order terminating such trust and providing*  
 17 *for the refund of said moneys to the cemetery company. The New*  
 18 *Jersey Cemetery Board shall, upon application of said cemetery*  
 19 *company and upon being satisfied that said cemetery company*  
 20 *operates said crematory wholly independent of and physically*  
 21 *separated from any cemetery, issue an authorization to the banking*

22 *institution acting as trustee of the Initial Balance Fund directing*  
23 *the release of the said fund to the cemetery company which estab-*  
24 *lished the fund. The income received from \***[such]**\* *a trust\**  
25 account shall be paid to the cemetery company to be used for  
26 maintenance and preservation of the cemetery. The fund so  
27 deposited shall be called Initial Balance Fund.*

28 Within 1 month after the issuance of a certificate of authority  
29 and before it shall dispose of any interment space, the cemetery  
30 company shall cause to be established a second trust fund in a  
31 banking institution authorized by law to maintain trust accounts  
32 and having and maintaining a place of business within this State.  
33 This second fund shall be called the Maintenance and Preservation  
34 Fund and shall be augmented from time to time as set forth in  
35 this act.

36 Whenever the cemetery company shall have deposited in its  
37 Maintenance and Preservation Fund a sum amounting to \$50,000.00,  
38 it shall submit proof thereof to the board and the board shall  
39 thereupon issue an authorization to the banking institution acting  
40 as trustee of the Initial Balance Fund directing the release of the  
41 corpus of said fund to the cemetery company which established  
42 the fund.

1 4. This act shall take effect immediately.

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## STATEMENT

The New Jersey Cemetery Act in 1973 gave supervision over construction of mausoleums to the Department of Environmental Protection. Since then, the Department of Community Affairs was given broad jurisdiction over most construction through the enactment of the Uniform Construction Code. DCA, as a result, has expert staff in the field of construction. This bill would transfer jurisdiction over mausoleum construction from DEP to DCA. The change has the approval of both departments.

The bill further provides for the DCA to promulgate within 90 days rules and regulations regarding the construction of mausoleums and related structures, including uniform limitations governing height and proximity to residential areas. This is in accord with the Cemetery Act's replacement of often contradictory local requirements with uniform State provisions.

Finally, this bill removes the requirement that "freestanding" crematories deposit \$25,000.00 in a trust fund. Such a requirement continues for cemeteries since the trust funds are to be used to maintain the grounds. Freestanding crematories obviously do not have the same need for maintenance.

*A. 1491 (1979)*

ASSEMBLY STATE GOVERNMENT, FEDERAL AND  
INTERSTATE RELATIONS AND VETERANS  
AFFAIRS COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 1491**  
with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 9, 1979

SPONSOR'S STATEMENT:

The New Jersey Cemetery Act in 1973 gave supervision over construction of mausoleums to the Department of Environmental Protection. Since then, the Department of Community Affairs was given broad jurisdiction over most construction through the enactment of the Uniform Construction Code. DCA, as a result, has expert staff in the field of construction. This bill would transfer jurisdiction over mausoleum construction from DEP to DCA. The change has the approval of both departments.

The bill further provides for the DCA to promulgate within 90 days rules and regulations regarding the construction of mausoleums and related structures, including uniform limitations governing height and proximity to residential areas. This is in accord with the Cemetery Act's replacement of often contradictory local requirements with uniform State provisions.

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COMMITTEE STATEMENT:

At the request of the sponsor, the committee amended the bill to conform its language, procedures and penalties to the "State Uniform Construction Code Act." In addition, the amendments authorize the Commissioner of Community Affairs to promulgate additional standards for the construction of mausoleums and columbariums if he determines that the standards in the subcodes of the Uniform Construction Code, or other national model codes, "do not adequately protect the public interest . . . ."

SENATE STATE GOVERNMENT, FEDERAL AND  
INTERSTATE RELATIONS AND VETERANS AFFAIRS  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 1491**

[SECOND OFFICIAL COPY REPRINT]  
with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 25, 1979

As noted in the sponsor's statement the New Jersey Cemetery Act in 1973 gave supervision over construction of mausoleums to the Department of Environmental Protection. Since then, the Department of Community Affairs was given broad jurisdiction over most construction through the enactment of the Uniform Construction Code. DCA, as a result, has expert staff in the field of construction. This bill would transfer jurisdiction over mausoleum construction from DEP to DCA. The change has the approval of both departments.

The bill provides for the DCA to promulgate within 90 days rules and regulations regarding the construction of mausoleums and related structures, including uniform limitations governing height and proximity to residential areas. This is in accord with the Cemetery Act's replacement of often contradictory local requirements with uniform State provisions.

This bill removes the requirement that "freestanding" crematories deposit \$25,000.00 in a trust fund. Such a requirement continues for cemeteries since the trust funds are to be used to maintain the grounds. Freestanding crematories obviously do not have the same need for maintenance.

At the request of the sponsor, the Assembly State Government Committee amended the bill to conform its language, procedures and penalties to the "State Uniform Construction Code Act." In addition, the amendments authorize the Commissioner of Community Affairs to promulgate additional standards for the construction of mausoleums and columbariums if he determines that the standards in the subcodes of the Uniform Construction Code, or other national model codes, "do not adequately protect the public interest . . . ."



A floor amendment inserted language that provided that a rule or regulation promulgated by DCA which is contrary to the provisions of a municipal zoning ordinance will not be enforceable within that municipality.

The Senate State Government Committee has, with the sponsor's approval, added another amendment. This amendment conforms the language of the bill to a recent decision by the New Jersey Superior Court (*Roman Catholic Diocese of Newark v. Cerone*, Superior Court, Law Division, Docket No. L-35806-76, 1979). In that decision, the court ruled that, while mausoleum construction may be subject to a municipality's zoning ordinances, such ordinances—such as those pertaining to height and set back requirements—must be “reasonable.”

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FISCAL NOTE TO  
**ASSEMBLY, No. 1491**

**STATE OF NEW JERSEY**

DATED: JANUARY 18, 1979

Assembly Bill No. 1491 transfers the jurisdiction over mausoleum construction from the Department of Environmental Protection to the Department of Community Affairs.

The Department of Community Affairs estimates that enactment of this legislation would require a State expenditure of \$12,000.00 in fiscal 1978-79, \$13,200.00 in fiscal 1979-80 and \$14,520.00 in fiscal 1980-81. Expenditures by local governments are estimated to be \$32,000.00 in fiscal 1978-79, \$35,200.00 in fiscal 1979-80 and \$38,720.00 in fiscal 1980-81.

Since the adoption of the Statewide Uniform Construction Code, the Department of Community Affairs has assumed responsibility for the review and supervision of all construction activity in the State. This bill recognizes the move toward a centrally administered construction code and has the support of officials from both departments.

The Office of Fiscal Affairs feels that the expenditures associated with this bill, as estimated by the Department of Community Affairs, are excessive. The Office of Fiscal Affairs estimates that the expenditures should be approximately one-half of those estimated by the Department of Community Affairs. However, since all expenditures involved in the process of reviewing and supervising construction activity are offset by fees charged, there eventually should be no additional costs incurred at either the State or local level.

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In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.