

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 496

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

1 RELATING TO CEMETERIES; AMENDING TITLE 27, IDAHO CODE, BY THE ADDITION OF A
2 NEW CHAPTER 3, TITLE 27, IDAHO CODE, TO PROVIDE FOR CITY COUNCIL OR CEME-
3 TERY MAINTENANCE DISTRICT BOARD PROCEDURES REGARDING UNUSED LOTS, TO
4 PROVIDE FOR RIGHTS OF LOT HOLDERS AND COMPENSATION, TO PROVIDE FOR PRO-
5 CEEDS OF RESALE OF LOTS OR PARCELS, AND TO PROVIDE THAT ADDITIONAL RE-
6 STRICTIONS ARE NOT PROHIBITED.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Title 27, Idaho Code, be, and the same is hereby amended
10 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
11 ter 3, Title 27, Idaho Code, and to read as follows:

12 CHAPTER 3

13 RIGHTS AND TITLE TO CEMETERY LOTS

14 27-301. COUNCIL OR BOARD PROCEDURES. (1) A city council or cemetery
15 maintenance district board may pass a resolution requesting that the owner,
16 or his or her heir or assign, of a lot, site or portion of the cemetery that
17 has been unused for burial purposes for more than fifty (50) years, file with
18 the city clerk with respect to a city cemetery, or the secretary with respect
19 to a cemetery maintenance district, a written statement of continuing claim
20 or interest in the lot, site or portion of the cemetery, if not otherwise lim-
21 ited by the express terms of the rights of burial accorded by the cemetery
22 owner.

23 (2) The city council or cemetery maintenance district board shall then
24 cause a copy of the resolution to be personally served on the owner, if pos-
25 sible, by delivering a copy of the resolution to the individual personally or
26 by leaving copies thereof at the individual's dwelling house or usual place
27 of abode with some person over the age of eighteen (18) years then residing
28 therein. The resolution shall notify the owner that the owner shall, within
29 sixty (60) days after service of the resolution on the owner, express his or
30 her interest in maintaining the cemetery lot, site or portion of the cemetery
31 by filing with the city clerk with respect to a city cemetery, or the sec-
32 retary with respect to a cemetery maintenance district, a written statement
33 of his or her continuing claim or interest in the lot, site or portion of the
34 cemetery.

35 (3) If it is determined that the owner is deceased, the requirement to
36 personally serve the owner may be met by mailing a copy of the resolution to
37 all known or reasonably ascertainable heirs of the owner. A search for heirs
38 shall include an inquiry into the next succeeding owner(s) of a decedent's
39 real property and a basic online search for information about the heirs of
40 the deceased owner.

1 (4) If the owner cannot be personally served with the resolution of the
2 city council or cemetery maintenance district board as required in subsec-
3 tion (2) of this section, the city council or cemetery maintenance district
4 board shall publish its resolution for three (3) successive weeks in a news-
5 paper of general circulation within the county and shall mail a copy of the
6 resolution within fourteen (14) days after the publication to the owner's
7 last known address, if available.

8 (5) If the owner or one (1) of his or her heirs or assigns shall, in re-
9 sponse to said resolution, submit a written statement of continuing interest
10 in the lot, site or portion of the cemetery for burial purposes, the city or
11 cemetery maintenance district shall reissue to said person a new conveyance
12 document evidencing his or her interest in said lot, site or portion of the
13 cemetery for burial purposes, in accordance with its usual practices. If
14 more than one (1) heir or assign shall state competing claims in the lot, site
15 or portion of the cemetery in question, the city or cemetery maintenance dis-
16 trict shall so notify all such competing heirs or assigns, but shall have no
17 authority to adjudicate the relative merits of said claims or interests. If,
18 within ten (10) years from the date of said notification, the competing heirs
19 or assigns shall not have agreed upon a resolution of their various interests
20 or adjudicated the same, the city or cemetery maintenance district may re-
21 quire from each a renewed written statement of each such heir's or assign's
22 continuing claim or interest in the lot, site or portion of the cemetery, by
23 complying with the provisions of this section. The city or cemetery mainte-
24 nance district may repeat this process every ten (10) years, as necessary,
25 until such time as ownership of the lot is vested in an individual. Alterna-
26 tively, when facing competing claims among heirs, the cemetery operator may
27 file an interpleader in a court of competent jurisdiction to determine the
28 rights of all claiming an ownership interest in the cemetery lots in ques-
29 tion.

30 (6) If, for sixty (60) days after the last date of service, mailing
31 and/or publication of the city council's or cemetery maintenance district
32 board's resolution, the owner, or his or her heir or assign, of the cemetery
33 lot fails to state an interest in the cemetery lot, site or portion of the
34 cemetery for burial purposes, the owner's rights, or the rights of his or her
35 heirs and/or assigns, are terminated, and that portion of the cemetery shall
36 be vested in the city or cemetery maintenance district.

37 27-302. RIGHTS OF LOT HOLDERS -- COMPENSATION. (1) The owner, or his
38 or her heir or assign, shall have the right, on presentation of the certifi-
39 cate of title or right to burial to the city or cemetery maintenance dis-
40 trict, to conveyance of any lot or parcel that has reverted to the city or
41 cemetery maintenance district, if the lot or parcel has not been resold. If
42 such lot or parcel has been resold, said owner, or his or her heir or assign,
43 shall have the right, at the option of the city or cemetery maintenance dis-
44 trict, to:

- 45 (a) Receive a right to burial in another lot or parcel; or
46 (b) Be compensated for the lot or parcel at the reasonable value of the
47 lot or parcel as of the date the certificate is presented to the city or
48 cemetery maintenance district.

1 27-303. PROCEEDS OF RESALE OF LOTS OR PARCELS. The proceeds from the
2 subsequent resale of any lot or parcel, title to which has been revested in
3 the city or cemetery maintenance district under this chapter, less the costs
4 and expenses incurred in the proceeding, shall become part of the permanent
5 care and improvement fund of the city or cemetery maintenance district, sub-
6 ject to subsequent disposition in accordance with Idaho law.

7 27-304. ADDITIONAL RESTRICTIONS NOT PROHIBITED. Nothing in this chap-
8 ter shall prevent cities or cemetery maintenance districts from imposing ad-
9 ditional terms on the sale or conveyance of rights to burial, nor from the
10 insertion of reversionary clauses into a certificate of title or right to
11 burial for periods of inactivity of less than fifty (50) years.