

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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SENATE BILL 443*
Pensions & Retirement and Aging Committee Substitute Adopted 6/8/11
House Committee Substitute Favorable 6/14/12

Short Title: NC Museum of Art/Cemetery Comm. Changes.

(Public)

Sponsors:

Referred to:

March 29, 2011

A BILL TO BE ENTITLED

1 AN ACT TO ELIMINATE THE NORTH CAROLINA STATE ART SOCIETY, INC., TO
2 CREATE A DIRECTOR'S COMMITTEE TO HIRE AND SUPERVISE THE DIRECTOR
3 OF THE NORTH CAROLINA MUSEUM OF ART, TO REMOVE THE NORTH
4 CAROLINA CEMETERY COMMISSION FROM THE NORTH CAROLINA
5 DEPARTMENT OF COMMERCE, AND TO ENDOW THE CEMETERY
6 COMMISSION WITH POWERS SIMILAR TO OCCUPATIONAL LICENSING
7 BOARDS.
8

9 The General Assembly of North Carolina enacts:

10
11 **PART I. ELIMINATE NORTH CAROLINA STATE ART SOCIETY, INC.**

12 **SECTION 1.(a)** Effective October 1, 2012, G.S. 105-275(41) is repealed.

13 **SECTION 1.(b)** Effective October 1, 2012, G.S. 135-27 reads as rewritten:

14 **"§ 135-27. Transfers from State to certain association service.**

15 ...

16 (d) The governing board of any association or organization listed in subsection (a), in
17 its discretion, may elect on or before July 1, 1983, by an appropriate resolution of said board, to
18 cause the employees of such association or organization so employed prior to July 1, 1983, to
19 become members of the Teachers' and State Employees' Retirement System. Such Retirement
20 System coverage shall be conditioned on such association's or organization's paying all of the
21 employer's contributions or matching funds from funds of the association or organization and
22 on such board's collecting from its employees the employees' contributions at such rates as may
23 be fixed by law and by the regulations of the Board of Trustees of the Retirement System, all of
24 such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive
25 coverage of the employees of any such association or organization may also be effected to the
26 extent that such board requests; provided, the association or organization shall pay all of the
27 employer's contributions or matching funds necessary for such purposes; and, provided further,
28 such association or organization shall collect from its employees all employees' contributions
29 necessary for such purpose, computed at such rates and in such amount as the Board of
30 Trustees of the Retirement System shall determine, all of such funds to be paid to the
31 Retirement System, together with such interest as may be due, and placed in the appropriate
32 funds. The provisions of this subsection shall be fully applicable to the North Carolina
33 Symphony Society, Inc. and the North Carolina State Art Society, Inc.

34"



1 **SECTION 1.(c)** Effective October 1, 2012, Article 3 of Chapter 140 of the General
2 Statutes, G.S. 143B-51(7), and Part 15 of Article 2 of Chapter 143B of the General Statutes are
3 repealed.

4 **SECTION 1.(d)** Effective October 1, 2012, G.S. 143B-53, as amended by Section
5 1.4(b) of this act, reads as rewritten:

6 **"§ 143B-53. Organization of the Department.**

7 The Department of Cultural Resources shall be organized initially to include the Art
8 Commission, the Art Museum Building Commission, the North Carolina Historical
9 Commission, the Tryon Palace Commission, the U.S.S. North Carolina Battleship Commission,
10 the Sir Walter Raleigh Commission, the Executive Mansion Fine Arts Committee, the
11 American Revolution Bicentennial Committee, the North Carolina Awards Committee, the
12 North Carolina Arts Council, the Public Librarian Certification Commission, the State Library
13 Commission, the North Carolina Symphony Society, Inc., ~~the North Carolina State Art Society,~~
14 and the Division of the State Library, the Division of Archives and History, the Division of the
15 Arts, and such other divisions as may be established under the provisions of the Executive
16 Organization Act of 1973."

17 **SECTION 1.(e)** Effective October 1, 2012, G.S. 140-5.13(b) reads as rewritten:

18 "(b) The Board of Trustees of the North Carolina Museum of Art shall consist of ~~29~~25
19 members, chosen as follows:

- 20 (1) The Governor shall appoint 13 members, one from each congressional
21 district in the State in accordance with G.S. 147-12(3b);
22 (2) ~~The North Carolina State Art Society, Incorporated, shall elect four~~
23 ~~members;~~
24 (3) The North Carolina Museum of Art Foundation, Incorporated, shall elect
25 four members;
26 (4) The Board of Trustees of the North Carolina Museum of Art shall elect four
27 members;
28 (5) The General Assembly shall appoint four members, two upon the
29 recommendation of the Speaker of the House of Representatives, and two
30 upon the recommendation of the President Pro Tempore of the Senate in
31 accordance with G.S. 120-121;
32 (6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1191, s. 49.

33 All regular appointments or elections except those by the General Assembly shall be for terms
34 of six years, except that each member shall serve until ~~his~~the member's successor is chosen and
35 qualifies. No person may be appointed or elected to more than two consecutive terms of six
36 years. All regular appointments by the General Assembly shall be for the then current
37 legislative term, and no appointee of the General Assembly may be appointed to more than two
38 consecutive terms of two years."

39
40 **PART II. CREATE DIRECTOR'S COMMITTEE**

41 **SECTION 2.(a)** G.S. 140-5.15 reads as rewritten:

42 **"§ 140-5.15. Director of Museum of Art; appointment; dismissal; powers and duties;**
43 **staff.**

44 (a) ~~The Secretary of Cultural Resources-Director's Committee shall appoint-elect and~~
45 supervise the Director of the North Carolina Museum of Art ~~from a list of not fewer than two~~
46 nominees recommended by the Board of Trustees of the North Carolina Museum of Art and
47 may dismiss the Director. The Director's Committee shall evaluate the performance of the
48 Director and shall determine the Director's compensation within the limitations of available
49 funding.

50 (b) ~~The Secretary of Cultural Resources may dismiss the Director unless two-thirds of~~
51 ~~the authorized membership of the Board of Trustees shall vote to reverse that action in~~

1 accordance with the following procedure: Upon dismissal of the Director, the Secretary shall
2 give to the chairman of the Board of Trustees written notice of that action. This notice shall be
3 sent to the chairman of the Board within 10 days after the Secretary makes a final decision on
4 dismissal. The chairman shall promptly communicate the notice of dismissal to all other Board
5 members. Board action to consider reversal of the Secretary's decision shall be taken at a
6 regular or special meeting called pursuant to G.S. 140-5.13(h). Reversal of the Secretary's order
7 of dismissal may be effected only by resolution adopted by an affirmative vote of two thirds of
8 the authorized membership of the Board of Trustees at a meeting held within 30 days after the
9 chairman of the Board receives from the Secretary written notice of dismissal of the Director.
10 All ex officio members of the Board shall be entitled to vote on this question. The failure of
11 two thirds of the authorized membership of the Board of Trustees to vote to reverse the
12 Secretary's order of dismissal within 30 days after the chairman of the Board receives from the
13 Secretary written notice of dismissal of the Director shall be deemed an affirmance of that
14 order by the Board.

15 (b1) The Director's Committee shall consist of five members chosen as follows:

- 16 (1) The Secretary of Cultural Resources, who shall serve as the chairman of the
17 Committee.
- 18 (2) The Chair of the Board of Trustees of the North Carolina Museum of Art.
- 19 (3) One member designated by the Board of Trustees of the North Carolina
20 Museum of Art.
- 21 (4) The President of the Board of Directors of the North Carolina Museum of
22 Art Foundation, Inc., or other designated representative of the Board.
- 23 (5) One member designated by the Board of the North Carolina Museum of Art
24 Foundation, Inc.

25 (b2) The member of the Director's Committee designated by the Board of Trustees of the
26 North Carolina Museum of Art and the member designated by the North Carolina Museum of
27 Art Foundation, Inc., each shall be elected for terms of four years. No person may be elected to
28 more than two consecutive terms of four years. Four members of the Committee shall
29 constitute a quorum for the transaction of business.

30 (c) The State-funded portion of the salary of the Director shall be fixed by the General
31 Assembly in the Current Operations Appropriations Act.

32 (d) The Director shall have the following powers and duties:

- 33 (1) Under the supervision of the ~~Board of Trustees, Director's Committee,~~ to
34 direct and administer the North Carolina Museum of Art in accordance with
35 the policies, rules, and regulations adopted by the Board of Trustees;
- 36 (2) To employ such persons as are necessary to perform the functions of the
37 North Carolina Museum of Art and are provided for in the budget of the
38 Museum and to promote, demote, and dismiss such persons in accordance
39 with State personnel policies, rules, and regulations. This paragraph shall not
40 apply to associate directors and curators;
- 41 (3) To serve as director of collections of the North Carolina Museum of Art;
- 42 (4) To serve as Secretary to the Board of Trustees.

43 (e) The Director, associate directors, and curators shall be exempt from the provisions
44 of the State Personnel Act. The Board of Trustees shall adopt, subject to the approval of the
45 Secretary of Cultural Resources, rules and regulations governing the employment, promotion,
46 demotion, and dismissal of associate directors and curators."

47 **SECTION 2.(b)** G.S. 140-3.15(g) reads as rewritten:

48 "(g) The Board of Trustees shall have a chairman, a vice-chairman, and such other
49 officers as the Board deems necessary. The chairman shall be designated by the Governor from
50 among the members of the Board. The vice-chairman shall be elected by and from among the
51 members of the Board. The chairman and vice-chairman shall be chosen for terms of two years

1 or for so long as they are members of the Board, whichever is the shorter period. The Director
2 of the North Carolina Museum of Art shall serve as Secretary to the Board of Trustees and shall
3 attend all ~~meetings, except when the Board is considering issues related to the Director's~~
4 ~~performance of duties.~~meetings."

6 PART III. CHANGES TO CEMETERY COMMISSION

7 SECTION 3.(a) G.S. 65-49 reads as rewritten:

8 "§ 65-49. The North Carolina Cemetery Commission.

9 ~~There is hereby established in the Department of Commerce a~~ The North Carolina
10 Cemetery Commission is established with the power and duty to adopt rules and regulations to
11 be followed in the enforcement of this Article."

12 SECTION 3.(b) G.S. 65-50 reads as rewritten:

13 "§ 65-50. Cemetery Commission; members, selection, quorum.

14 (a) Membership. – The Cemetery Commission shall consist of nine members. The
15 General Assembly shall appoint two ~~members,~~members who own or manage or who have
16 retired from owning or managing a cemetery in North Carolina, one of whom shall be
17 recommended by the President Pro Tempore of the Senate and one of whom shall be
18 recommended by the Speaker of the House of Representatives. The Governor shall appoint
19 seven members as follows:

20 (1) Two members who own or manage cemeteries in North Carolina.

21 (2) Three members who are selected from six nominees submitted by the North
22 Carolina Cemetery Association.

23 (3) Two public members who have no financial interest in, and are not involved
24 in management of, any cemetery or funeral related business.

25 (b) Terms. – Four members of the initial Commission shall be appointed for a term to
26 expire June 30, 1977, and three members shall be appointed for a term to expire June 30, 1976.
27 At the end of the respective terms of office of the initial members of the Commission, their
28 successors shall be nominated in the same manner, selected from the same categories and
29 appointed for terms of four years and until their successors are appointed and qualified. ~~Any~~
30 ~~appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or~~
31 ~~disability of a member shall be for the balance of the unexpired term.~~

32 (b1) Any vacancy shall be filled by the authority originally filling that position, except
33 that any vacancy in appointments by the General Assembly shall be filled in accordance with
34 G.S. 120-122.

35 (c) Removal. – The appointing authority shall have the power to remove any member of
36 the Commission appointed by that authority from office for misfeasance, malfeasance and
37 nonfeasance according to applicable provisions of law.

38 (d) Quorum. – A majority of the Commission shall constitute a quorum for the
39 transaction of business.

40 (e) ~~Chair-Officers.~~ – At the first meeting of the Commission held after September 1,
41 1975, the Commission shall elect one of its members as its ~~chairman~~ chair and another as its
42 ~~vice chairman,~~vice-chair, both to serve through June 30 of the next following year. Thereafter,
43 at its first meeting held on or after July 1 of each year, the Commission shall elect from its
44 members a ~~chairman and vice chairman to serve through June 30 of the next following~~
45 ~~year-president, vice president, and secretary-treasurer with no two offices to be held by the~~
46 ~~same person. All officers shall serve a term of one year and shall serve until their successors are~~
47 ~~elected and qualified."~~

48 SECTION 3.(c) G.S. 65-51 reads as rewritten:

49 "§ 65-51. Principal office.

50 The principal office of the Commission shall be in the City of Raleigh, North Carolina.
51 Notice of all regular and special meetings of the Commission shall be advertised 10 or more

1 days in advance in at least three newspapers in North Carolina having inter-county circulation
 2 in the State. Each member of the Commission shall receive per diem and allowances in
 3 accordance with ~~G.S. 138-5~~ G.S. 93B-5. ~~The administrator~~ Members of the
 4 ~~Commission,~~ Commission and other employees required to attend and legal counsel to the
 5 Commission shall be entitled to actual expenses while attending regular or special meetings of
 6 the Commission held other than in Raleigh, North Carolina. All salaries, compensation, and
 7 expenses of the Commission shall be paid from funds coming to the Commission pursuant to
 8 this Article. In no case shall any salary, compensation, or other expense of the Commission be
 9 charged against the General Fund."

10 **SECTION 3.(d)** G.S. 65-53 reads as rewritten:

11 "**§ 65-53. Powers.**

12 In addition to other powers conferred by this Article, the Cemetery Commission shall have
 13 the following powers and duties:

- 14 (1) ~~The administrator shall be appointed by the Governor upon recommendation~~
 15 ~~of the Cemetery Commission. The compensation of the administrator and~~
 16 ~~such other personnel as is necessary to operate the Commission is subject to~~
 17 ~~the provisions of Chapter 126 of the General Statutes of North Carolina. The~~
 18 ~~Commission is authorized and empowered to~~ To employ such staff, including
 19 legal counsel, as may be ~~necessary~~ necessary to perform its duties and
 20 determine the compensation of its employees.
- 21 (2) To examine a cemetery company's records when a person applies for a
 22 change of control of the company.
- 23 (3) Investigate, upon its own initiative or upon a verified complaint in writing,
 24 the actions of any person engaged in the business or acting in the capacity of
 25 a licensee under this Article. The license of a licensee may be revoked or
 26 suspended for a period not exceeding two years, or until compliance with a
 27 lawful order imposed in the final order of suspension, or both, where the
 28 licensee in performing or attempting to perform any of the acts specified in
 29 this Article has been guilty of:
- 30 a. Failing to pay the fees required herein;
 - 31 b. Failing to make any reports required by this Article;
 - 32 c. Failing to remit to the care and maintenance trust fund, merchandise
 33 trust fund, or preconstruction trust fund the required amounts;
 - 34 d. Making any substantial misrepresentation;
 - 35 e. Making any false statement of a character likely to influence or
 36 persuade;
 - 37 f. A continued and flagrant course of misrepresentation or making of
 38 false promises through cemetery agents or salesmen;
 - 39 g. Violating any provision of this Article or rule promulgated by the
 40 Commission; or
 - 41 h. Any other conduct, whether of the same or a different character than
 42 specified in this section, which constitutes fraud or dishonest dealing.
- 43 (4) ~~In all proceedings under this Article for the revocation or suspension of~~
 44 ~~licenses, the provisions of Chapter 150B of the General Statutes shall be~~
 45 ~~applicable. To hold hearings in accordance with the provisions of this Article~~
 46 ~~and Article 3A of Chapter 150B of the General Statutes to subpoena~~
 47 ~~witnesses and to administer oaths to or receive the affirmation of witnesses~~
 48 before the Commission.

49 In any show cause hearing before the Commission held under the
 50 authority of Article 3A of Chapter 150B of the General Statutes where the
 51 Commission imposes discipline against a licensee, the Commission may

- 1 recover the costs, other than attorneys' fees, of holding the hearing against all
2 respondents jointly, not to exceed two thousand five hundred dollars
3 (\$2,500).
- 4 (5) ~~At such time as the Commission finds it necessary it may bring an action in~~
5 ~~the name of the State in the court of the county in which the place of~~
6 ~~business is located against such person to enjoin such person from engaging~~
7 ~~in or continuing such violation or doing any act or acts in furtherance~~
8 ~~thereof. To apply to the courts, in its own name, for injunctive relief to~~
9 prevent violations of this Article or violations of any rules adopted pursuant
10 to this Article. Any court may grant injunctive relief regardless of whether
11 criminal prosecution or any other action is instituted as a result of the
12 violation. A single violation is sufficient to invoke the injunctive relief under
13 this subdivision. In any such action, an order or judgment may be entered
14 awarding such temporary or permanent injunction as may be deemed proper;
15 provided, that before any such action is brought the Commission shall give
16 the cemetery at least 20 days' notice in writing, stating the alleged violation
17 and giving the cemetery an opportunity within the 20-day period to cure the
18 violation. In addition to all other means provided by law for the enforcement
19 of a temporary restraining order, temporary injunction, or permanent
20 injunction, the court shall have the power and jurisdiction to impound and to
21 appoint a receiver for the property and business of the defendant, including
22 books, papers, documents, and records appertaining thereto or so much
23 thereof as the court may deem reasonably necessary to prevent further
24 violation of this Article through or by means of the use of said property and
25 business. The Commission may institute proceedings against the cemetery or
26 its officers, whereafter an examination, pursuant to this Article, a shortage in
27 the care and maintenance trust fund, merchandise trust fund or mausoleum
28 and belowground crypts preconstruction trust fund is discovered, to recover
29 said shortage.
- 30 (6) Whenever any special additional audit or examination of a licensee's
31 premises, facilities, books or records is necessary because of the failure of
32 the licensee to comply with the requirements imposed in this Article or by
33 the rules and regulations of the Commission, to charge a fee based on the
34 cost of the special examination or audit, taking into consideration the salary
35 of any employees involved in the special audit or examination and any
36 expenses incurred.
- 37 (7) ~~Promulgate~~To promulgate rules and regulations requiring licensees to file
38 with the Commission plans and specifications for the minimum quality of
39 any product sold. The sale of any product for which plans and specifications
40 required by the rules and regulations have not been filed or sale of any
41 product of a lesser quality than the plans and specifications filed with the
42 Commission is a violation of this Article.
- 43 (8) When the Commission finds that failure by a licensee to maintain a cemetery
44 properly has caused that cemetery to be a public nuisance or a health or
45 safety hazard, the Commission may bring an action for injunctive relief,
46 against the responsible licensee, in the superior court of the county in which
47 the cemetery or any part thereof is located.
- 48 (9) To acquire, hold, rent, encumber, alienate, and otherwise deal with real
49 property in the same manner as a private person or corporation, subject only
50 to approval of the Governor and Council of State. Collateral pledged by the

1 Commission for an encumbrance is limited to the assets, incomes, and
2 resources of the Commission.

3 (10) To purchase, rent, or lease equipment and supplies and purchase liability
4 insurance to cover the activities of the Commission, its operations, or its
5 employees."

6 **SECTION 3.(e)** Article 9 of Chapter 65 of the General Statutes is amended by
7 adding a new section to read:

8 **"§ 65-53.1. Inspectors.**

9 (a) The Commission may appoint one or more agents who shall serve at the pleasure of
10 the Commission and who shall have the title "Inspector of the North Carolina Cemetery
11 Commission."

12 (b) To determine compliance with the provisions of this Article and regulations
13 promulgated under this Article, inspectors may do the following:

14 (1) Enter the office, establishment, or place of business in North Carolina of any
15 cemetery broker, cemetery company, cemetery management organization,
16 cemetery sales organization, or preneed sales licensee to inspect the records,
17 office, establishment, or facility or to inspect the practice conducted or
18 license of any licensee.

19 (2) Inspect criminal and probation records of licensees and applicants for
20 licenses under this Article to obtain evidence of their character.

21 (c) Inspectors may serve papers and subpoenas issued by the Commission or any office
22 or member thereof under authority of this Article and shall perform other duties prescribed or
23 ordered by the Commission.

24 (d) The Commission may prescribe an inspection form to be used by the inspectors in
25 performing their duties.

26 (e) Upon request by the Commission, the Attorney General of North Carolina shall
27 provide the inspectors with appropriate identification cards signed by the Attorney General or
28 his or her designated agent. In lieu of identification cards, the Commission may design and
29 issue badges to inspectors."

30 **SECTION 3.(f)** Article 9 of Chapter 65 of the General Statutes is amended by
31 adding a new section to read:

32 **"§ 65-54.1. Commission records are confidential.**

33 Records, papers, and other documents containing information collected or compiled by the
34 Commission, its members, or employees as a result of a complaint, investigation, inquiry, or
35 interview in connection with an application for license, or in connection with a license holder's
36 professional ethics and conduct, shall not be considered public records within the meaning of
37 Chapter 132 of the General Statutes. Any notice or statement of charges against a license holder
38 or applicant, or any notice to a license holder or applicant of a hearing to be held by the
39 Commission, is a public record even though it may contain information collected and compiled
40 as a result of a complaint, investigation, inquiry, or interview conducted by the Commission. If
41 any record, paper, or other document containing information collected and compiled by the
42 Commission is admitted into evidence in a hearing held by the Commission, it shall then be a
43 public record within the meaning of Chapter 132 of the General Statutes."

44 **SECTION 3.(g)** G.S. 143B-433(1) reads as rewritten:

45 **"§ 143B-433. Department of Commerce – organization.**

46 The Department of Commerce shall be organized to include:

47 (1) The following agencies:

48 a. The North Carolina Alcoholic Beverage Control Commission.

49 b. The North Carolina Utilities Commission.

50 c. Repealed by Session Laws 2011-401, s. 1.5, effective November 1,
51 2011.

- 1 d. The North Carolina Industrial Commission.
- 2 e. State Banking Commission.
- 3 f. Savings Institutions Division.
- 4 g. Repealed by Session Laws 2001-193, s. 11, effective July 1, 2001.
- 5 h. Credit Union Commission.
- 6 i. Repealed by Session Laws 2004-199, s. 27(d), effective August 17,
- 7 2004.
- 8 j. The North Carolina Mutual Burial Association Commission.
- 9 ~~k. North Carolina Cemetery Commission.~~
- 10 l. The North Carolina Rural Electrification Authority.
- 11 m. Repealed by Session Laws 1985, c. 757, s. 179(d).
- 12 n. North Carolina Science and Technology Research Center.
- 13 o. Repealed by Session Laws 2011-145, s. 14.6(g), effective July 1,
- 14 2011.
- 15 p. Repealed by Session Laws 2010-180, s. 7(f), effective August 2,
- 16 2010.
- 17 q. Economic Development Board.
- 18 r. Labor Force Development Council.
- 19 s., t. Repealed by Session Laws 2000, c. 140, s. 76.(j), effective
- 20 September 30, 2000.
- 21 u. Navigation and Pilotage Commissions established by Chapter 76 of
- 22 the General Statutes.
- 23 v. Repealed by Session Laws 1993, c. 321, s. 313b."

24 **SECTION 3.(h)** Section 14.7(a) of S.L. 2011-145 reads as rewritten:

25 **"SECTION 14.7.(a)** In consultation with the Fiscal Research Division, the Department of
26 Commerce and the ABC Commission, State Banking Commission, Credit Union Division,
27 ~~Cemetery Commission~~, Utilities Commission, Utilities Commission Public Staff, and the Rural
28 Electrification Authority shall study the following: (i) the types of services provided by the
29 Department of Commerce to each of the agencies during each fiscal year; and (ii) formulas or
30 methods to be used to determine the costs of the services, including the advantages and
31 disadvantages of each formula or method. The Department of Commerce and each of the
32 agencies shall prepare a joint recommendation as to which formula or method to determine the
33 costs of the services should be used. In addition, the Department of Commerce and each of the
34 agencies shall develop a memorandum of understanding that details the services to be provided
35 by the Department of Commerce during each fiscal year."

36 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
37 law.