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A113, R170, S65

STATUS INFORMATION

General Bill

Sponsors: Senators Martin, Vaughn, McConnell, Knotts, Verdin, Fair, Alexander and Elliott

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Companion/Similar bill(s): 3346

Introduced in the Senate on January 9, 2007

Introduced in the House on February 14, 2007

Last Amended on June 20, 2007

Passed by the General Assembly on June 20, 2007

Governor's Action: June 27, 2007, Signed

Summary: Cemeteries

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
11/29/2006	Senate	Prefiled
11/29/2006	Senate	Referred to Committee on Judiciary
1/9/2007	Senate	Introduced and read first time SJ-53
1/9/2007	Senate	Referred to Committee on Judiciary SJ-53
1/17/2007	Senate	Referred to Subcommittee: Martin (ch), Malloy, Campsen, Williams
2/7/2007	Senate	Committee report: Favorable with amendment Judiciary SJ-30
2/8/2007	Senate	Amended SJ-14
2/8/2007	Senate	Read second time SJ-14
2/13/2007	Senate	Read third time and sent to House SJ-17
2/14/2007	House	Introduced and read first time HJ-4
2/14/2007	House	Referred to Committee on Judiciary HJ-5
5/9/2007	House	Committee report: Favorable with amendment Judiciary HJ-6
5/15/2007	House	Amended HJ-30
5/15/2007	House	Read second time HJ-33
5/16/2007	House	Read third time and returned to Senate with amendments HJ-21
5/23/2007	Senate	Non-concurrence in House amendment SJ-81
5/24/2007	House	House insists upon amendment and conference committee appointed Reps. Hagood, GR Smith, and McLeod HJ-4
5/24/2007	Senate	Conference committee appointed Martin, Campsen, and Williams SJ-29
6/19/2007	Senate	Free conference powers granted SJ-48
6/19/2007	Senate	Free conference committee appointed Martin, Campsen, and Williams SJ-48
6/20/2007	House	Free conference powers granted HJ-66
6/20/2007	House	Free conference committee appointed Reps. Hagood, GR Smith, and McLeod HJ-67
6/20/2007	Senate	Free conference report adopted SJ-66
6/20/2007	House	Free conference report adopted HJ-68
6/20/2007	Senate	Ordered enrolled for ratification SJ-71
6/21/2007		Ratified R 170
6/27/2007		Signed By Governor
7/2/2007		Copies available
7/2/2007		Effective date 06/27/07

7/6/2007

Act No. 113

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VERSIONS OF THIS BILL

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(A113, R170, S65)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 43, TITLE 27 SO AS TO ESTABLISH REQUIREMENTS TO ALLOW ACCESS TO CEMETERIES ON PRIVATE PROPERTY, INCLUDING, AMONG OTHER THINGS, TO SPECIFY PERSONS WHO MUST BE ALLOWED SUCH ACCESS, TO ESTABLISH PURPOSES FOR EXERCISING ACCESS, TO REQUIRE WRITTEN NOTICE TO THE OWNER OF THE PROPERTY, TO REQUIRE A WRITTEN PROPOSAL FROM THE OWNER DESIGNATING CONDITIONS FOR ACCESS, TO PROVIDE PROCEDURES FOR SEEKING RELIEF IN MAGISTRATES COURT, TO SPECIFY THE JURISDICTION AND REMEDIES THAT APPLY, TO PROVIDE CIRCUMSTANCES UNDER WHICH IMMUNITY FROM LIABILITY IS GRANTED TO AN OWNER OF PROPERTY FOR ACCESS GRANTED, TO SPECIFY THE CONDUCT REQUIRED AND PROHIBITED OF PERSONS EXERCISING ACCESS TO SUCH PROPERTY, TO PROVIDE CONDITIONS UNDER WHICH THESE ACCESS PROVISIONS DO NOT APPLY, AND IN CERTAIN CIRCUMSTANCES, TO LIMIT THE APPLICATION OF THESE ACCESS PROVISIONS; TO AMEND SECTION 6-29-1145, RELATING TO PROHIBITING A LOCAL PLANNING AGENCY FROM ISSUING A PERMIT FOR ACTIVITY THAT IS CONTRARY TO, CONFLICTS WITH, OR IS PROHIBITED BY A RESTRICTIVE COVENANT UNLESS THE COVENANT HAS BEEN WAIVED, SO AS TO FURTHER SPECIFY THAT THE LOCAL PLANNING AGENCY MUST HAVE ACTUAL NOTICE OF THE RESTRICTIVE COVENANT AND TO PROVIDE HOW THE AGENCY IS TO ASCERTAIN THE EXISTENCE OF THE COVENANT, TO FURTHER SPECIFY THAT THE RESTRICTIVE COVENANT MUST BE RELEASED, RATHER THAN WAIVED, AND THAT IT MUST BE RELEASED BY THE APPROPRIATE AUTHORITY OR PROPERTY HOLDERS, AND TO DEFINE "ACTUAL NOTICE"; TO DESIGNATE SECTIONS 27-43-10 THROUGH 27-43-40 AS ARTICLE 1 OF CHAPTER 43, TITLE 27, ENTITLED "REMOVAL OF ABANDONED CEMETERIES", AND TO REENTITLE CHAPTER 43 OF TITLE 27 AS "CEMETERIES".

Be it enacted by the General Assembly of the State of South Carolina:

Access to cemeteries on private property

SECTION 1. Chapter 43, Title 27 of the 1976 Code is amended by adding:

“Article 3 Access to Cemeteries on Private Property

Section 27-43-310. (A) An owner of private property on which a cemetery, burial ground, or grave is located must allow ingress and egress to the cemetery, burial ground, or grave as provided in this section by any of the following persons:

(1) family members and descendants of deceased persons buried on the private property or an agent who has the written permission of family members or descendants;

(2) a cemetery plot owner;

(3) persons lawfully participating in a burial; or

(4) a person engaging in genealogy research who has received the written permission of:

(a) family members or descendants of deceased persons buried on the private property; or

(b) the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record.

(B) The ingress and egress granted to persons specified in subsection (A) must be exercised as provided in this section and is limited to the purposes of:

(1) visiting graves;

(2) maintaining the gravesite or cemetery;

(3) lawfully burying a deceased person in a cemetery or burial plot by those granted rights of burial to that plot; or

(4) conducting genealogy research.

(C)(1) In order to exercise the ingress and egress provided in subsection (A), a person authorized by subsection (A) must give written notice to the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf of and with permission of the owner of record that:

(a) he or the person for whom he requests ingress and egress meets the statutory requirements provided in subsection (A); and

(b) he requests a written proposal designating reasonable conditions for the exercise of ingress and egress as provided in subsection (B).

(2) Within thirty days after receipt of the written notice to exercise the ingress and egress, the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record must respond with a written proposal designating reasonable conditions for ingress and egress, including, but not limited to, routes to be used for access, duration of access, and time restrictions for access.

(3) The exercise of ingress and egress on the property by persons authorized in subsection (A) for the purposes specified in subsection (B) must be exercised as reasonably restricted in time and manner by the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record. The exercise of ingress and egress must not substantially and unreasonably interfere with the use, enjoyment, or economic value of the property by the owner or an occupant of the private property.

(4) If, thirty days after receipt of the written notice to exercise ingress and egress on the private property, written notice of reasonable conditions for the exercise of the ingress and egress as provided in subsection (B) have not been proposed or accepted, a person authorized by subsection (A) or the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner may institute a proceeding in the magistrates court of the county in which the cemetery, burial ground, or grave is located. In granting relief to either party, the magistrate may set the frequency, hours, duration, or other conditions of the ingress and egress.

(5) A magistrate may deny the exercise of ingress and egress as provided in this section if:

(a) the person seeking to exercise the ingress and egress is not authorized by subsection (A); or

(b) the magistrate is presented with credible evidence that the person authorized by subsection (A) is involved in an imminent or actual violation of state or local law while upon, or entering, or exiting the private property; or

(c) the magistrate makes a finding, based upon a showing of credible evidence, that there is no condition of entry, no matter how limited in time, manner, or otherwise restricted, that would allow the person authorized by subsection (A) to enter the private property for the purposes authorized by subsection (B) without substantially and unreasonably interfering with the use, enjoyment, or economic value of the property by the owner or an occupant of the private property.

(6) The provisions of this subsection do not authorize a magistrate to make determinations concerning the title of the property or establish an easement across the property.

(D) In the absence of intentional or wilful misconduct, or intentional, wilful, or malicious failure to guard or warn against a dangerous condition, use, structure, or activity, the owner of record, an agent of the owner of record, or an occupant of the private property acting on behalf and with permission of the owner of record is immune from liability in any civil suit, claim, action, or cause of action arising out of the access granted pursuant to this section.

(E)(1) A person exercising ingress or egress to a cemetery, burial ground, or grave under the provisions of this section is responsible for conducting himself in a manner that does not damage the private property or the cemetery, burial ground, or grave, and is liable to the owner of record for any damage caused as a result of the ingress or egress.

(2) The ingress or egress to a cemetery, burial ground, or grave on private property conferred by this section does not include the authority to operate motor vehicles on the private property unless a road or adequate right-of-way exists that permits access by motor vehicles and the person authorized to exercise ingress and egress by subsection (A) has been given written permission to use motor vehicles on the road or right-of-way.

(F)(1) The provisions of this section do not apply to any deed or other written instrument executed prior to the effective date of this section which creates or reserves a cemetery, burial ground, or grave on private property, and which specifically sets forth terms of ingress and egress.

(2) The provisions of this section in no way abrogate, affect, or encumber the title to the landowner's private property and are exercisable only for a particular private property that is subject to the provisions of this section."

Restrictive covenants affecting permit activity

SECTION 2. Section 6-29-1145 of the 1976 Code, as added by Act 45 of 2007, is amended to read:

"Section 6-29-1145. (A) In an application for a permit, the local planning agency must inquire in the application or by written instructions to an applicant whether the tract or parcel of land is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the permitted activity.

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

- (1) in the application for the permit;
- (2) from materials or information submitted by the person or persons requesting the permit; or
- (3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.

(C) As used in this section:

- (1) 'actual notice' is not constructive notice of documents filed in local offices concerning the property, and does not require the local planning agency to conduct searches in any records offices for filed restrictive covenants;
- (2) 'permit' does not mean an authorization to build or place a structure on a tract or parcel of land; and
- (3) 'restrictive covenant' does not mean a restriction concerning a type of structure that may be built or placed on a tract or parcel of land."

Article designated and named; chapter renamed

SECTION 3. Section 27-43-10 through Section 27-43-40 of the 1976 Code are designated as Article 1 of Chapter 43, Title 27 and are entitled "Removal of Abandoned Cemeteries", and Chapter 43 of Title 27 of the 1976 Code is reentitled "Cemeteries".

Severability

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 21st day of June, 2007.

Approved the 27th day of June, 2007.
