

## **A NEW CEMETERY LAW**

*By: Ted Urquhart*

Both the Alabama House & Senate approved SB464, Cemeteries, as amended, on the last day of the 2007 regular session thanks to the special efforts of Senator “Walking” Wendell Mitchell (D, Luverne). SB464 was one of three bills recommended by the Historic Cemetery Study Commission that the legislature established in 2005 (SJR-4/Act 205-211) to identify deficiencies in current state laws concerning cemetery preservation, to study other states’ laws and to proposed improved, cemetery preservation-friendly legislation. The other two bills, SB465 & 466, never made it out of the Senate’s Governmental Affairs Committee during the 2007 Session and will have to be reintroduced (and assigned new bill numbers) for the 2008 Session.

SB464 was assigned Act Number 2007-408 and Governor Riley signed the act on June 13, 2007 and is now law. It should be codified into the Code of Alabama 1975 during 2008.

The enrolled bill / act / new law addresses the problem that the ACPA most frequently hears about during workshops & presentations and in emails received—access to landlocked cemeteries. It also authorizes county & city governments the option of forming cemetery authorities to preserve neglected cemeteries within their jurisdiction.

The Historic Cemetery Study Commission was composed of a distinguished number of individuals representing state, county and municipal government as well as civic & religious organizations with oversight of, responsibilities for, or interests in the preservation of historic cemeteries: Senators Wendell Mitchell, Luverne; E.B. McClain, Brighton; Ted Little, Auburn; and Representatives Eric Major, Fairfield; Jimmy Martin, Clanton; Steve McMillan, Baldwin Co. Also, Brenda Webb, Huntsville; Councilwoman Debbie Quinn Fairhope; Dr. Eugene Futato, Office/ Archaeological Research UA; Eloise Josey, Indian Affairs Commission; Joyce Nicoll, Montgomery; Lee Anne Wofford, AHC; Mack Clark, Prattville; Mickey Shaw, Elmore Co. Commission; Regina Miller, Forestry Commission; Rev. Gary Burton, Hope Hull; Ronny Pouncey, Dept. of Transportation; Ruth Ott, Montgomery; Sheriff Herbie Johnson, Prattville; Ted Urquhart, ACPA; Tracy Berezansky, ADAH; and Bill Little, III, Bar Association. Text of the new law follows:

## **ALABAMA ACT NO. 2007-408**

( C O P Y )

SB464

By: Senator Mitchell

ENROLLED, An Act,

To authorize certain persons the right to access a cemetery on privately owned or leased property, and to authorize a county or city governing body to establish an authority and a trust fund for the maintenance of neglected cemeteries.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) Owners and lessees of private land on which a cemetery, graves, or burial sites are located shall have a duty to allow ingress and egress to the cemetery, graves, or burial sites by (1) family members, friends, or descendants of deceased persons buried there; (2) any cemetery plot owner; and (3) any person engaged in genealogical, historical, or cultural research, who has given reasonable notice to the owner of record or to the lessees, or both.

(b) The right of ingress and egress granted by this section shall be reasonable and limited to the purposes of visiting graves or burial sites, maintaining the gravesite or burial site or cemetery, or conducting genealogical, historical, cultural research, or, in the case of a plot owner, burying a deceased person in the plot. The owner or lessee of the land has the right to designate the frequency, hours, and duration of the access and the access route if no traditional access route is obviously visible from a view of the property, provided that the designation is reasonable for the purposes set out above.

(c) Any person entering onto private land pursuant to this section shall be responsible for conducting himself or herself in a manner that does not damage the private land, cemetery, gravesite, or burial site, and shall be liable to the owner or lessee of the property for any damage caused as the result of his or her access. The landowner and lessee, in the absence of gross negligence or willful misconduct, shall be immune from liability in any civil suit, action, or cause of action arising out of the access granted pursuant to this section.

Section 2. (a) County commissions may establish a county cemetery rehabilitation authority (hereinafter "authority") to designate, register and maintain neglected cemeteries lying outside any municipal area within the county. When a county commission establishes an authority, it shall appoint a board to oversee the duties given to the authority. Each board member shall serve at the pleasure of the county commission. City governments have the same power to establish a city cemetery rehabilitation authority and a board to oversee the registration and maintenance of neglected cemeteries within their municipal limits. Governments are encouraged to include on their board representatives of genealogical and historical societies and other citizens who have shown an interest in preserving cemeteries.

(b) In the absence of action by the appropriate governing body, any citizen may submit, in writing, a request to the appropriate governing body that the governing body establish a cemetery rehabilitation authority, and such request shall be spread upon the minutes of the next meeting of the appropriate governing body following receipt of such request.

Section 3. (a) A cemetery rehabilitation authority created herein may accept the assistance of private citizens as well as money donated by private citizens or family, in order to afford the upkeep and restoration of cemeteries designated as neglected. A trust fund may be established to supply continuing needs over a long period of time.

(b) The cemetery authority may work with private landowners to determine the frequency of access, either for specified work days, or for visits by family to restore and or maintain the graves, or by genealogical researchers.

(c) The county commission of each county may provide for the identification, cataloguing, or recording of neglected cemeteries. A copy of all surveys shall be forwarded to the Alabama Historical Commission for establishment of a statewide inventory. If the county or city has a cemetery rehabilitation authority, this duty may be delegated to that authority.

(d) The authority or the county commissions of each county shall provide for the registration, with the Historical Commission, of each neglected cemetery within the county unless the cemetery has been previously registered. The registration shall take place within one year of notification being made to the board by any interested party of the existence of the neglected cemetery.

(e) No county or municipality nor any person under the supervision or direction of the county or municipality, providing good faith assistance in securing or maintaining a cemetery under this act, may be subject to civil liabilities or penalties of any type.

Section 4. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

Passed both Houses: 07-JUN-07

APPROVED: June 13, 2007

TIME: 1:35 PM

/S/

Bob Riley

Governor