

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 430 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/1/07 S3/7/07

A Bill

SENATE BILL 637

5 By: Senator Brown
6 *By: Representative W. Lewellen*
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8

For An Act To Be Entitled

10 AN ACT TO PERMIT A CITY OR COUNTY AND THE STATE
11 OF ARKANSAS TO CREATE A PARTNERSHIP TO MANAGE,
12 OPERATE, MAINTAIN, AND PRESERVE INSOLVENT
13 LICENSED PERPETUAL CARE CEMETERIES; AND FOR OTHER
14 PURPOSES.
15

Subtitle

16 AN ACT TO PERMIT A CITY OR COUNTY AND
17 THE STATE OF ARKANSAS TO CREATE A
18 PARTNERSHIP TO MANAGE, OPERATE,
19 MAINTAIN, AND PRESERVE INSOLVENT
20 LICENSED PERPETUAL CARE CEMETERIES.
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. NOT TO BE CODIFIED. Legislative intent.

27 (a) The General Assembly finds:

28 (1) Certain cemeteries in the state have been declared
29 insolvent, fallen into neglect, and placed in court-ordered receivership at
30 the request of state regulators and will remain in that condition if a buyer
31 cannot be found;

32 (2) The State of Arkansas has an interest in the appearance and
33 the viable operation of certain historically significant cemeteries in the
34 state that are in receivership, as they are gathering points for persons
35 interested in Arkansas history and a part of the cultural history of the



1 state and the municipalities or counties where the cemeteries are located;
2 and

3 (3) The public would be better served in certain circumstances
4 by taking a cemetery out of receivership and operating it as a public
5 partnership between various governmental entities.

6 (b) It is the intent of this act to authorize contracts with local
7 governing bodies for maintenance and operation of certain cemeteries and to
8 preserve existing cemetery records.

9
10 SECTION 2. Arkansas Code § 20-17-1006 is amended to read as follows:
11 20-17-1006. Arkansas Cemetery Board - Powers and duties.

12 The Arkansas Cemetery Board shall have the authority to:

13 (1) Conduct at any time and from time to time such reasonable
14 periodic, special, or other examination of any cemetery or cemetery company,
15 including, but not limited to, an examination of the physical condition or
16 appearance of the cemetery, the financial condition of the company and any
17 trust funds maintained by the company, and such other examinations as the
18 board or Securities Commissioner deems necessary or appropriate in the public
19 interest. The examinations shall be made by members or representatives of the
20 board or by a certified public accountant or registered public accountant as
21 authorized in § 20-17-1007;

22 (2) Issue or amend permits to operate a cemetery in accordance
23 with this subchapter;

24 (3) Suspend or revoke permits to operate a cemetery when any
25 cemetery fails to comply with this subchapter, rules promulgated pursuant to
26 this subchapter, or any order of the board;

27 (4) Make rules, regulations, and forms to enforce this
28 subchapter;

29 (5) Require every cemetery company to observe minimum accounting
30 principles and practices and make and keep such books and records in
31 accordance therewith for such period of time as the board may by rule
32 prescribe;

33 (6)(A) Subpoena witnesses, books, and records in connection with
34 alleged violations of this subchapter or rules or orders of the board. With
35 the approval of the chair of the board or two (2) board members, the
36 Securities Commissioner may issue subpoenas.

1 (B) In case of contumacy or refusal to obey a subpoena
2 issued to any person, the Pulaski County Circuit Court, upon application by
3 the board, may issue to the person an order requiring him or her to appear
4 before the board or the person designated by the board. Failure to obey the
5 order of the court may be punished by the court as a contempt of court;

6 (7) Require additional contributions to the permanent
7 maintenance fund of the cemetery where provided for in this subchapter,
8 including, but not limited to, contributions not to exceed three thousand
9 dollars (\$3,000) whenever any cemetery company fails to properly care for and
10 maintain or preserve the cemetery;

11 (8)(A) Apply to the Pulaski County Circuit Court to enjoin any
12 act or practice and to enforce compliance with this subchapter or any rule,
13 regulation, or order pursuant to this subchapter whenever it appears to the
14 board, upon sufficient grounds or evidence satisfactory to the board, that
15 any person has engaged in or is about to engage in any act or practice
16 constituting a violation of any provision of this subchapter or any rule or
17 regulation pursuant to this subchapter.

18 (B) The court may not require the board to post a bond;

19 (9) Apply to the circuit court of the county in which the
20 cemetery is located for appointment of a receiver or conservator of the
21 cemetery corporation or its permanent maintenance fund when it appears to the
22 board that a cemetery corporation is insolvent or that the cemetery
23 corporation, its officers, directors, agents, or the trustees of its
24 permanent maintenance fund have violated this subchapter and the rules
25 promulgated under this subchapter or have failed to comply with any board
26 order; ~~and~~

27 (10) Increase, in accordance with regulations adopted by the
28 board, the percentage of the gross proceeds of the sale of any grave space,
29 crypt, niche, or similar entombment required to be deposited into the
30 permanent maintenance fund of the cemetery in accordance with § 20-17-1016
31 whenever it is determined that the principal of the permanent maintenance
32 fund is or will be insufficient to generate enough income to operate and
33 maintain the cemetery; and

34 (11)(A) Purchase insolvent, licensed perpetual care cemeteries
35 that have been in court-ordered receivership or conservatorship for at least
36 five (5) years.

1 (B) If the taking of legal possession of the cemetery
2 requires the payment of consideration, any payment made by the board shall
3 not exceed one thousand dollars (\$1,000).

4
5 SECTION 3. Arkansas Code Title 20, Chapter 17, Subchapter 10 is
6 amended to add additional sections to read as follows:

7 20-17-1028. Contracts with municipality or county where a cemetery is
8 located.

9 (a)(1) The Arkansas Cemetery Board may contract with the municipality
10 or county where a cemetery is located for the care and maintenance and the
11 operation of the cemetery.

12 (2) Services relating to the care and maintenance and the
13 operation of the cemetery include without limitation:

14 (A) The sale and conveyance of lots;

15 (B) The opening and closing of graves;

16 (C) The preparation of financial reports and legal
17 documents;

18 (D) The maintenance of driveways;

19 (E) The removal of trash and debris;

20 (F) The cutting of grass;

21 (G) The planting and care of trees, shrubs, and flowers;

22 and

23 (H) Necessary improvements to streets, avenues, walks, or
24 other public grounds of the cemetery.

25 (3) The municipal or county government may subcontract with qualified
26 persons to provide services under this section.

27 (b)(1) If the Arkansas Cemetery Board contracts with a municipality or
28 county under this section, the municipality or county , in addition to
29 complying with any applicable statute, shall file with the Arkansas Cemetery
30 Board in March of each year a financial report showing all moneys received
31 and expended during the preceding year, including without limitation:

32 (A) The date of receipt of all moneys;

33 (B) The source from which the moneys were received;

34 (C) All moneys paid out;

35 (D) The date the moneys were paid out;

36 (E) The person to whom the moneys were paid out; and

1 (F) The purpose of the payment.

2 (2) At the end of each calendar year, the municipality or county shall
3 review the fiscal position of the cemetery and direct any excess moneys to
4 the permanent maintenance fund.

5 (c) For the purposes of this section, a municipality or county may
6 accept funds from public and private entities and direct the funds to:

7 (1) General maintenance and improvement; or

8 (2) The permanent maintenance fund.

9 (d) The state, a city, or a county shall be immune from liability in
10 contract or in tort for actions taken to implement this section.

11
12 20-17-1029. Cemetery advisory boards – Membership – Organization –
13 Authority.

14 (a) The Governor may create a cemetery advisory board for any cemetery
15 purchased under § 20-17-1006 to assist the state and the municipality or
16 county where the cemetery is located in achieving the efficient management,
17 operation, maintenance, and preservation of the cemetery.

18 (b)(1) A cemetery advisory board shall be composed of seven (7)
19 members appointed by the Governor as follows:

20 (A) Three (3) members shall be owners of lots in the
21 cemetery or have demonstrated an interest in the preservation of the
22 cemetery;

23 (B) Three (3) members shall be owners or operators of a
24 licensed cemetery or funeral home in this state; and

25 (C) One (1) member shall be a person actively engaged, by
26 profession or as a volunteer, in activities promoting the historic
27 preservation of cemeteries in the local community.

28 (2)(A) The terms of the members shall be for three (3) years.

29 (B) Members shall serve until their successors are
30 appointed and qualified.

31 (C) The initial members shall draw lots so that three (3)
32 members serve a term of one (1) year, two (2) members serve a term of two (2)
33 years, and two (2) members serve a term of three (3) years.

34 (D)(i) Vacancies for any unexpired term of a member shall
35 be filled in the same manner as the original appointment of the vacating
36 member.

1 (ii) An appointee to fill a vacancy shall serve for
2 the unexpired term and is eligible for reappointment.

3 (3) Members shall biannually elect a chair, vice chair, and a
4 secretary from the membership, whose duties shall be those customarily
5 exercised by the officers or specifically designated by the cemetery advisory
6 board.

7 (4) No member shall be liable for any damages unless it is made
8 to appear that he or she has acted with corrupt and malicious intent.

9 (5) Members shall serve without compensation.

10 (6) A cemetery advisory board shall meet as often as it deems
11 necessary for the purpose of carrying out its duties under this section.

12 (c) A cemetery advisory board may:

13 (1) Establish itself as a section 501(c)(3) corporation under the
14 Internal Revenue Code of 1986, as it existed on January 1, 2007;

15 (2) Raise private funds for the benefit of the cemetery general
16 fund and the permanent maintenance fund;

17 (3) Recruit volunteers; and

18 (4)(A) Advise the Arkansas Cemetery Board and the municipality
19 or county where the cemetery is located concerning long-term goals and plans
20 for efficient cemetery operation and beautification.

21 (B) No policy of a cemetery advisory board relating to
22 long-term goals and plans for efficient cemetery operation and beatification
23 shall be adopted unless the municipality or county where the cemetery is
24 located approves the policy.

25
26 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
27 General Assembly of the State of Arkansas that this act provides an
28 efficient, cost-effective solution for cemeteries that have been declared
29 insolvent and been placed in court-ordered receivership; that a partnership
30 between the cemetery and local government will permit long-term progress in
31 cemetery maintenance and preservation; and that cemeteries continuing in
32 receivership for more than five (5) years adversely impact the state and
33 local communities where the cemeteries are located and are a burden upon the
34 courts. Therefore, an emergency is declared to exist and this act being
35 immediately necessary for the preservation of the public peace, health, and
36 safety shall become effective on:

- 1 (1) The date of its approval by the Governor;
- 2 (2) If the bill is neither approved nor vetoed by the Governor,
- 3 the expiration of the period of time during which the Governor may veto the
- 4 bill; or
- 5 (3) If the bill is vetoed by the Governor and the veto is
- 6 overridden, the date the last house overrides the veto.

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/s/ Brown

APPROVED: 3/22/2007