**South Carolina General Assembly**

118th Session, 2009-2010

**A255, R321, H4129**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Funderburk, Umphlett, Hodges, Clemmons, Whipper, R.L. Brown and Weeks

Document Path: l:\council\bills\ms\7410zw09.docx

Introduced in the House on June 16, 2009

Introduced in the Senate on March 2, 2010

Last Amended on May 27, 2010

Passed by the General Assembly on June 2, 2010

Governor's Action: June 11, 2010, Signed

Summary: Archaeological resource

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 6/16/2009 House Introduced and read first time [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C06-16-09.docx)‑71

 6/16/2009 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** [HJ](file:///h%3A%5CHJ%20Archive%5C2009%5C06-16-09.docx)‑71

 1/27/2010 House Member(s) request name added as sponsor: Umphlett

 2/4/2010 House Member(s) request name added as sponsor: Hodges

 2/4/2010 House Committee report: Favorable **Agriculture, Natural Resources and Environmental Affairs** [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-04-10.docx)‑12

 2/17/2010 House Member(s) request name added as sponsor: Clemmons

 2/24/2010 House Member(s) request name added as sponsor: Whipper, R.L.Brown, Weeks

 2/25/2010 House Debate interrupted [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-25-10.docx)‑25

 2/25/2010 House Debate adjourned [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-25-10.docx)‑49

 2/25/2010 House Amended [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-25-10.docx)‑71

 2/25/2010 House Read second time [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-25-10.docx)‑74

 2/25/2010 House Unanimous consent for third reading on next legislative day [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-25-10.docx)‑74

 2/26/2010 House Read third time and sent to Senate [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C02-26-10.docx)‑3

 2/26/2010 Scrivener's error corrected

 3/2/2010 Senate Introduced and read first time [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C03-02-10.docx)‑17

 3/2/2010 Senate Referred to Committee on **Judiciary** [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C03-02-10.docx)‑17

 3/5/2010 Senate Referred to Subcommittee: Knotts (ch), Campbell, Nicholson

 5/26/2010 Senate Committee report: Favorable with amendment **Judiciary** [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-26-10.docx)‑16

 5/27/2010 Senate Committee Amendment Adopted [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-27-10.docx)‑30

 5/27/2010 Senate Amended [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-27-10.docx)‑30

 5/27/2010 Senate Read second time [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-27-10.docx)‑30

 5/27/2010 Senate Unanimous consent for third reading on next legislative day [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-27-10.docx)‑30

 5/28/2010 Senate Read third time and returned to House with amendments [SJ](file:///h%3A%5CSJ%20Archive%5C2010%5C05-28-10.docx)‑1

 6/1/2010 Scrivener's error corrected

 6/2/2010 House Debate adjourned on amendments [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C06-02-10.docx)‑64

 6/2/2010 House Concurred in Senate amendment and enrolled [HJ](file:///h%3A%5CHJ%20Archive%5C2010%5C06-02-10.docx)‑79

 6/7/2010 Ratified R 321

 6/11/2010 Signed By Governor

 7/1/2010 Effective date 06/11/10

 7/8/2010 Act No. 255

**VERSIONS OF THIS BILL**

[6/16/2009](file:///p%3A%5Cpprever%5C2009-10%5C4129_20090616.docx)

[2/4/2010](file:///p%3A%5Cpprever%5C2009-10%5C4129_20100204.docx)

[2/25/2010](file:///p%3A%5Cpprever%5C2009-10%5C4129_20100225.docx)

[2/26/2010](file:///p%3A%5Cpprever%5C2009-10%5C4129_20100226.docx)

[5/26/2010](file:///p%3A%5Cpprever%5C2009-10%5C4129_20100526.docx)

[5/27/2010](file:///p%3A%5Cpprever%5C2009-10%5C4129_20100527.docx)

[6/1/2010](file:///p%3A%5Cpprever%5C2009-10%5C4129_20100601.docx)

(A255, R321, H4129)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑11‑780 SO AS TO PROVIDE IT IS UNLAWFUL FOR A PERSON TO WILFULLY, KNOWINGLY, OR MALICIOUSLY ENTER UPON THE LANDS OF ANOTHER OR THE POSTED LANDS OF THE STATE AND DISTURB OR EXCAVATE A PREHISTORIC OR HISTORIC SITE FOR THE PURPOSE OF DISCOVERING, UNCOVERING, MOVING, REMOVING, OR ATTEMPTING TO REMOVE AN ARCHEOLOGICAL RESOURCE, AND TO PROVIDE EACH SUCH ENTRY AND ACT OF DISTURBANCE OR EXCAVATION CONSTITUTES A SEPARATE AND DISTINCT VIOLATION, TO PROVIDE CERTAIN RELATED DEFINITIONS, TO PROVIDE A COURT MAY CALL UPON THE STATE ARCHEOLOGIST TO PROVIDE CERTAIN EVIDENCE RELATED TO THE VALUE OF AN ARCHAEOLOGICAL RESOURCE, TO PROVIDE MISDEMEANOR PENALTIES AND A FELONY PENALTY FOR VIOLATIONS, TO PROVIDE CERTAIN EQUIPMENT AND CONVEYANCES USED IN CONNECTION WITH A FELONY VIOLATION OF THIS SECTION ARE SUBJECT TO FORFEITURE, AND TO PROVIDE EQUIPMENT AND CONVEYANCES SUBJECT TO THIS FORFEITURE MAY BE FORFEITED BY ANY LAW ENFORCEMENT OFFICER AS PROVIDED IN THIS SECTION, SUBJECT TO CERTAIN REQUIREMENTS, TO PROVIDE A CIVIL CAUSE OF ACTION TO AN AFFECTED LANDOWNER FOR A VIOLATION, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 16‑17‑600, AS AMENDED, RELATING TO THE DESTRUCTION OR DESECRATION OF HUMAN REMAINS OR REPOSITORIES OF HUMAN REMAINS, SO AS TO APPLY THE SECTION TO NATIVE AMERICAN BURIAL GROUNDS OR BURIAL MOUNDS, AND TO PROVIDE A PERSON WHO OWNS OR HAS AN INTEREST IN CARING FOR THE PROPERTY, IN THE CASE OF PRIVATE LANDS, OR THE STATE, IN THE CASE OF STATE LANDS, MAY BRING A CIVIL CAUSE OF ACTION FOR A VIOLATION OF THIS SECTION TO RECOVERY DAMAGES, THE COST OF RESTORATION AND REPAIR OF THE PROPERTY, ATTORNEY’S FEES, AND COURT COSTS.**

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

**Prohibition on entering certain lands to discover, uncover, move, remove, or attempt to remove an archaeological resource; definitions, penalties, exceptions**

SECTION 1. Article 7, Chapter 11, Title 16 of the 1976 Code is amended by adding:

 “Section 16‑11‑780. (A) As used in this section:

 (1) ‘Archaeological resource’ means all artifacts, relics, burial objects, or material remains of past human life or activities that are at least one hundred years old and possess either archaeological or commercial value, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carving, intaglios, graves, or human skeletal materials.

 (2) ‘Archaeological value’ means the value of the data associated with the archaeological resource. This value may be appraised in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

 (3) ‘Commercial value’ means the fair market value of the archaeological resource. When a violation has resulted in damage to the archaeological resource, the fair market value may be determined using the condition of the archaeological resource prior to the violation, to the extent its prior condition can be ascertained.

 (4) ‘Cost of restoration and repair’ means the sum of the costs incurred for emergency restoration or repairs to an archaeological resource, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

 (a) reconstruction of the archaeological resource;

 (b) stabilization of the archaeological resource;

 (c) ground contour reconstruction and surface stabilization;

 (d) physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

 (e) examination and analysis of the archaeological resource, including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining resources that cannot be otherwise conserved; or

 (f) preparation of reports relating to any of the activities described in this section.

 (5) ‘Posted lands’ means lands where the State has complied with the notice or warning requirement which must either be posted or given to an offender pursuant to Section 16‑11‑600.

 (B) The court may call upon the Office of the State Archaeologist to provide evidence to assist in determining, calculating, or computing archaeological value, commercial value, or the cost of restoration and repair of an archaeological resource.

 (C) It is unlawful for a person to wilfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. Each unlawful entry and act of disturbance or excavation of a prehistoric or historic site constitutes a separate and distinct offense.

 (D) For a first offense, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined, imprisoned, or both, pursuant to the jurisdiction of magistrates as provided in Section 22‑3‑550.

 (E) For a second offense for violating this section on the same property as the first offense or on another posted property, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars or more than three thousand dollars or imprisoned not more than three years, or both.

 (F) For a third or subsequent offense for violating this section on the same property as the first offense or on another posted property, a person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

 (G) For the purposes of subsections (E) and (F) of this section, a second, third, or subsequent offense on the same property as the first offense or on another posted property must include no offense that occurs more than ten years after conviction for the first offense.

 (H) All equipment and conveyances including, but not limited to, trailers, motor vehicles, and watergoing vessels that were used in connection with felony violations of this section are subject to forfeiture to the State in the same manner as equipment and conveyances are subject to forfeiture pursuant to Section 44‑53‑520, if the offender either owns the equipment or conveyance or is a resident of the equipment or conveyance owner’s household.

 (1) All equipment and conveyances subject to confiscation and forfeiture under this section may be confiscated by any law enforcement officer as provided in this section. The confiscating officer shall deliver the confiscated property immediately to the county or municipality where the offense occurred. The county or municipality shall notify the registered owner of the confiscated property by certified mail within seventy‑two hours of the confiscation. Upon notice, the registered owner has ten days to request a hearing before the court. The confiscation hearing must be held within ten days from the date of receipt of the request. The confiscated property must be returned to the registered owner if the registered owner shows by a preponderance of the evidence that he did not know the confiscated property was used in the commission of the crime, that he did not give permission for the confiscated property to be used in the commission of the crime, and that the confiscated property had not been used for a previous violation of this section on the posted land where this offense occurred or other posted land.

 (2) The county or municipality in possession of the confiscated property shall provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.

 (3) Forfeiture of property is subordinate in priority to all valid liens and encumbrances.

 (4) A person whose property is subject to forfeiture under this section is entitled to a jury trial if requested.

 (I) The landowner, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover the greater of the archaeological resource’s archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney’s fees and court costs.

 (J) Nothing contained in this section shall limit or interfere with a landowner’s lawful use of his property or with the state’s ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.

 (K) Nothing contained in this section shall limit or interfere with:

 (1) a landowner’s lawful use of his property;

 (2) the lawful acts of a landowner’s employee, agent, or independent contractor acting in the scope of and in the course of his employment, agreement, or contract;

 (3) the lawful acts of a utility worker acting in the scope of and in the course of his employment; or

 (4) the state’s ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.”

**Prohibition on destruction or desecration of human remains; Native American burial grounds included; civil action for violation created**

SECTION 2. Section 16‑17‑600 of the 1976 Code, as last amended by Act 229 of 2004, is amended to read:

 “Section 16‑17‑600. (A) It is unlawful for a person wilfully and knowingly, and without proper legal authority to:

 (1) destroy or damage the remains of a deceased human being;

 (2) remove a portion of the remains of a deceased human being from a burial ground where human skeletal remains are buried, a grave, crypt, vault, mausoleum, Native American burial ground or burial mound, or other repository; or

 (3) desecrate human remains.

 A person violating the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not less than one year nor more than ten years, or both.

 A crematory operator is neither civilly nor criminally liable for cremating a body which (1) has been incorrectly identified by the funeral director, coroner, medical examiner, or person authorized by law to bring the deceased to the crematory; or (2) the funeral director has obtained invalid authorization to cremate. This immunity does not apply to a crematory operator who knew or should have known that the body was incorrectly identified.

 (B) It is unlawful for a person wilfully and knowingly, and without proper legal authority to:

 (1) obliterate, vandalize, or desecrate a burial ground where human skeletal remains are buried, a grave, graveyard, tomb, mausoleum, Native American burial ground or burial mound, or other repository of human remains;

 (2) deface, vandalize, injure, or remove a gravestone or other memorial monument or marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, Native American burial ground or burial mound, memorial park, or battlefield; or

 (3) obliterate, vandalize, or desecrate a park, Native American burial ground or burial mound, or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons.

 A person violating the provisions of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than five thousand dollars, or both.

 (C)(1) It is unlawful for a person wilfully and knowingly to steal anything of value located upon or around a repository for human remains or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park, or for a person wilfully, knowingly, and without proper legal authority to destroy, tear down, or injure any fencing, plants, trees, shrubs, or flowers located upon or around a repository for human remains, or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park.

 (2) A person violating the provisions of item (1) is guilty of:

 (a) a felony and, upon conviction, if the theft of, destruction to, injury to, or loss of property is valued at two hundred dollars or more, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and must be required to perform not more than five hundred hours of community service;

 (b) a misdemeanor triable in magistrates court if the theft of, destruction to, injury to, or loss of property is valued at less than two hundred dollars. Upon conviction, a person must be fined, imprisoned, or both, pursuant to the jurisdiction of magistrates as provided in Section 22‑3‑550, and must be required to perform not more than two hundred fifty hours of community service.

 (D) A person who owns or has an interest in caring for the property, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover damages, and the cost of restoration and repair of the property, plus attorney’s fees and court costs.”

**Savings**

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Time effective**

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

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