

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 844

INTRODUCER: Criminal Justice Committee; and Senator Simmons and others

SUBJECT: Criminal Offenses Involving Tombs and Memorials

DATE: April 24, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Jones	Hrdlicka	CJ	Fav/CS
2. McAuliffe	Sadberry	ACJ	Recommend: Fav/CS
3. McAuliffe	Hansen	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 844 provides an exception for cemeteries exempt under chapter 497, Florida Statutes, from the criminal penalties in section 872.02, Florida Statutes.

Currently, under section 872.02, Florida Statutes, it is a third degree felony to willfully and knowingly damage or remove a tomb, monument, or other specified structure and a second degree felony to willfully and knowingly disturb the contents of a grave or tomb. The penalties do not apply to certain persons, like cemeteries operating under chapter 497, Florida Statutes, (the Florida Funeral, Cemetery, and Consumer Services Act). However, there are cemeteries that are exempt from the regulation and licensing requirements of chapter 497, Florida Statutes, and these cemeteries are not exempt from the criminal penalties of section 872.02, Florida Statutes. If a person at such a cemetery were to disinter a dead human body at the request of a legally authorized person, he or she could be criminally charged under section 872.02, Florida Statutes.

The bill provides an exception for cemeteries exempt under chapter 497, Florida Statutes, from the criminal penalties in section 872.02, Florida Statutes. The bill also specifies the criteria that an exempt cemetery must meet to relocate the contents of a grave or tomb. If a legally authorized person objects to the relocation, a public hearing must be held before the applicable city council or county commission.

The bill also clarifies elements of the offense of disturbing the contents of a grave or tomb.

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill, as originally filed, will insignificantly increase state prison beds. The bill may have a negative fiscal impact on both privately owned exempt cemeteries and county and city owned exempt cemeteries. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Cemeteries

A cemetery is a place dedicated to, used, or intended to be used for the permanent interment of human remains or cremated remains. A cemetery can be any combination of one or more of the following structures or places:

- Land or earth interment;
- Mausoleum, vault, or crypt interment; or
- Columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains.¹

Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act, specifies that the Board of Funeral, Cemetery and Consumer Services (board) oversee the regulation and licensing of cemeteries. Section 497.260, F.S., exempts numerous types of cemeteries from these regulation and licensing requirements. Currently, there are 171 licensed cemeteries² and anywhere from 3500-5000 cemeteries exempt from licensing and regulation in Florida.³

Exempt cemeteries include:

- Religious institution cemeteries of less than 5 acres, which provide only single-level ground burial;
- County and municipal cemeteries;
- Community and nonprofit association cemeteries, which provide only single-level ground burial and do not sell burial spaces or burial merchandise;
- Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- A columbarium consisting of less than one-half acre, which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;⁴

¹ Section 497.005(13), F.S.

² Division of Funeral, Cemetery and Consumer Services, *Who We Regulate, Regulated Categories and Number of Licensees*, August 19, 2016, available at <http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm> (last visited March 7, 2017).

³ Department of Financial Services, *Bill Analysis for House Bill 107*, January 3, 2017, (on file with the Senate Criminal Justice Committee).

⁴ The religious institution establishing such a columbarium must ensure that the columbarium is perpetually kept and maintained in a manner consistent with ch. 497, F.S. If the religious institution relocates, the religious institution must relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the religious institution. Section 497.260(1)(f), F.S.

- Family cemeteries of less than 2 acres, which do not sell burial spaces or burial merchandise;
- A mausoleum consisting of 2 acres or less, which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;⁵ and
- A columbarium consisting of 5 acres or less which is located on the main campus of a state university.⁶

Disinterment

Disinterment is the removal of a dead human body from earth interment or aboveground interment.⁷ The board regulates the disinterment or transportation of human remains.⁸ Funeral directors are also required to obtain written consent from a legally authorized person⁹ or a court prior to the disinterment or reinterment of a dead human body.¹⁰ A legally authorized person is defined as one of the following, listed in order of priority:

- The decedent, when written inter vivos authorizations and directions are provided by the decedent;
- The person designated by the decedent as authorized to direct disposition as listed on the decedent's United States Department of Defense Record of Emergency Data;
- The surviving spouse, unless the spouse has been arrested for committing an act of domestic violence against the deceased that resulted in or contributed to the death of the deceased;
- A son or daughter who is 18 years of age or older;
- A parent;
- A brother or sister who is 18 years of age or older;
- A grandchild who is 18 years of age or older;
- A grandparent; or
- Any person in the next degree of kinship.

The regulations for disinterment or reinterment or the requirement to obtain written consent prior do not apply to exempt cemeteries.

⁵ The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with ch. 497, F.S., and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum. Section 497.260(1)(h), F.S.

⁶ Section 497.260(1), F.S. The university or university direct-support organization, which establishes the columbarium shall ensure that the columbarium is constructed and perpetually kept and maintained in a manner consistent with subsection (2) and ch. 497, F.S. Section 1000.21, F.S., defines a "state university" to include any branch campuses, centers, or other affiliates of the following institutions: The University of Florida, The Florida State University, The Florida Agricultural and Mechanical University, The University of South Florida, The Florida Atlantic University, The University of West Florida, The University of Central Florida, The University of North Florida, The Florida International University, The Florida Gulf Coast University, New College of Florida, The Florida Polytechnic University.

⁷ Section 497.005(31), F.S.

⁸ Section 497.384(2), F.S.

⁹ Section 497.005(43), F.S.

¹⁰ Section 497.384(3), F.S.

Offenses concerning graves

Section 872.02, F.S., provides criminal penalties for injuring or removing a tomb or monument or disturbing the contents of a grave or tomb. It is a third degree felony¹¹ for a person to willfully and knowingly destroy, mutilate, deface, injure, or remove any:

- Tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure or thing placed or designed for a memorial of the dead;
- Fence, railing, curb, or other thing intended for the protection or ornamentation of any tomb, monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other structure before mentioned; or
- Enclosure for the burial of the dead, or willfully destroy, mutilate, remove, cut, break, or injure any tree, shrub, or plant placed or being within any such enclosure.¹²

It is a second degree felony¹³ if a person willfully and knowing disturbs the contents of a grave or tomb.

The above criminal penalties do not apply to:

- Any person acting under the direction or authority of the Division of Historical Resources of the Department of State;
- Cemeteries operating under ch. 497, F.S.; or
- Any person authorized by law to remove or disturb a tomb.

Cemeteries exempt under ch. 497, F.S., are not exempt from the criminal penalties of s. 872.02, F.S. If a person at an exempt cemetery were to disinter a dead human body at the request of a legally authorized person, he or she could be criminally charged.

III. Effect of Proposed Changes:

The bill amends s. 872.02, F.S., to provide an exception for cemeteries exempt under ch. 497, F.S., from the newly imposed criminal penalties.

The bill specifies that it a third degree felony if a person willfully and knowingly destroys, mutilates, defaces, injures, or removes any tomb monument, gravestone, burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts, or other approved structure or approved thing placed or designed for a memorial of the dead.

The bill also provides that anyone performing routine maintenance and upkeep is exempt from the penalties associated with willfully destroying, mutilating, removing, cutting, breaking, or injuring any tree, shrub, or plant placed or being within any enclosure for the burial of the dead.

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

¹² Section 872.02(1), F.S.

¹³ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

The bill specifies that the second degree felony offense of disturbing the contents of a grave or tomb includes the conduct of excavation, exposure, movement, and removal of the contents of a grave or tomb.

The bill specifies that all cemeteries can remove or relocate the contents of a grave or tomb in response to a natural disaster.

An owner, officer, employee or agent of an exempt cemetery are exempt from the above stated criminal penalties and may relocate the contents of a grave or tomb after receiving a written and signed contract between the owner and a legally authorized person.

If a legally authorized person cannot be located after a reasonable search or if 75 years or more have elapsed since the date of entombment, interment, or inurnment, then public notice must be posted. A public notice must be published once a week for four consecutive weeks in a newspaper of general circulation within the county in which the cemetery is located.

The public notice must contain the:

- Name of the cemetery;
- Name, address, and telephone number of the representative of the cemetery with whom written objections may be filed;
- Reason for the relocation of the contents of the grave or tomb;
- Names of the human remains to be relocated;
- Approximate date of the initial entombment, interment or inurnment;
- Proposed site of relocation; and
- Proposed date of relocation, which may not be less than 30 days after the last publication.

If a legally authorized person does not object within 30 days from the last date of publication of the public notice, the cemetery may proceed with the relocation.

If a legally authorized person objects, a public hearing must be held before the city council if the cemetery is in a municipality. If the cemetery is not in a municipality the hearing must be held before the appropriate county commission. The city council or county commission has sole authority to grant a request for relocation for the contents of such graves or tombs.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent that the cities or counties have to hold and participate in hearings or post a public notice this will likely cost the cities and counties money. Article VII, s. 18(b) of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not

apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{14,15,16}

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a negative fiscal impact on privately owned exempt cemeteries. The bill requires exempt cemeteries to publicly notice the plan to relocate the contents of a grave or tomb. If the relocation is objected to, a hearing is required. The notice and hearing process could cause privately owned exempt cemeteries to incur costs.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill, as originally filed, will insignificantly increase state prison beds (an increase of 10 or fewer prison beds).

The bill may have a negative fiscal impact on county or city owned exempt cemeteries. The bill requires exempt cemeteries to publicly notice the plan to relocate the contents of a grave or tomb. If the relocation is objected to, a hearing is required. The notice and hearing process and holding the hearings could cause exempt cemeteries owned by cities or counties to incur costs.

VI. Technical Deficiencies:

It is unclear if an exempt cemetery can have a public hearing, as provided in subsection (6), if a legally authorized person refuses to sign a contract with the owner exempt cemetery, as provided in subsection (5)(a). Additionally, subsection (6) needs to reference subsection (5) to clarify when a public hearing is authorized.

¹⁴ FLA. CONST. art. VII, s. 18(d).

¹⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

¹⁶ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

VII. Related Issues:

The bill does not include any criteria for the city councils or county commissions to use in the relocation disputes or any recourse for the councils or commissions to provide if they deny a relocation.

VIII. Statutes Affected:

This bill substantially amends section 872.02 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 13, 2017:

The committee substitute:

- Deletes proposed changes to the terms “tomb” and “memorial”;
- Deletes proposed changes to the penalties for injuring or removing a tomb or monument;
- Clarifies that any cemetery may remove or relocate the contents of a grave or tomb as a response to a natural disaster;
- Allows an exempt cemetery to relocate the contents of a grave or tomb if there is a signed contract between the cemetery owner and a legally authorized person;
- Allows an exempt cemetery to publicly notice a relocation if a legally authorized person cannot be found after a reasonable search;
- Revises hearing requirements; and
- Changes the effective date.

- B. **Amendments:**

None.