

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 Criminal Justice

BILL: SB 844

INTRODUCER: Senators Simmons and Baxley

SUBJECT: Criminal Offenses Involving Tombs and Memorials

DATE: March 10, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Jones | Hrdlicka | CJ | Pre-meeting |
| 2. | | | ACJ | |
| 3. | | | AP | |

I. Summary:

SB 844 provides an exception for cemeteries exempt under ch. 497, F.S., from the criminal penalties in s. 872.02, F.S. Chapter 497, F.S., the Florida Funeral, Cemetery, and Consumer Services Act, specifies that the Board of Funeral, Cemetery and Consumer Services oversees the regulation and licensing of cemeteries. Section 497.260, F.S., exempts numerous types of cemeteries from these regulations and licensing requirements.

Section 872.02, F.S., provides 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 tomb. These 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 under s. 872.02, F.S.

The bill provides an exemption for cemeteries exempt under ch. 497, F.S., from the criminal penalties in s. 872.02, F.S. The bill also clarifies that the second degree felony offense of disturbing the contents of a tomb includes the conduct of excavation, exposure, movement, and removal of the contents of a tomb.

The Criminal Justice Impact Conference met on March 2, 2017, and determined that the bill will have a positive (increase) insignificant impact on 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
- 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

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.

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

- 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.

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 tomb or grave.

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 provided criminal penalties.

The bill defines the term memorial to mean a structure or thing placed or designed for a memorial of the dead. The term includes a monument or gravestone. The bill also specifies that a tomb includes a grave space,¹⁴ mausoleum,¹⁵ columbarium,¹⁶ or belowground crypt¹⁷ and a

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.

¹⁴ A grave space is a space of ground in a cemetery intended to be used for the interment in the ground of human remains. Section 497.005(40), F.S.

¹⁵ A mausoleum is a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains. Section 497.005(46), F.S.

¹⁶ A columbarium is a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains. Section 497.005(18), F.S.

¹⁷ A belowground crypt is interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod. These are also known as "lawn crypts," "westminsters," or "turf-top crypts." Section 497.005(4), F.S.

burial mound, an earthen or shell monument containing human skeletal remains or associated burial artifacts, or any other enclosure for the burial of the dead.

To incorporate these newly defined terms the bill specifies that a person commits a third degree felony if he or she willfully and knowingly:

- Destroys, mutilates, defaces, injures, or removes a tomb or memorial or a fence, railing, curb, or other thing intended for the protection or ornamentation of a tomb or memorial; or
- Destroys, mutilates, removes, cuts, breaks, or injures a tree, shrub, or plant placed or within an enclosure for the burial of the dead.

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

The bill defines an exempt cemetery to mean a cemetery that is exempt from regulation pursuant to s. 497.260(1), F.S., and an operator to mean an owner, officer, employee, or agent.

The above stated criminal penalties do not apply to:

- An operator of an exempt cemetery who is conducting ordinary maintenance, if such maintenance does not relocate a memorial, tomb, or contents of a tomb to another plot or site.
- An operator of an exempt cemetery who relocates a memorial, a tomb, or the contents of a tomb to another plot or site if:
 - Before the relocation, the operator obtains written authorization for the relocation from a legally authorized person or a court order authorizing the relocation;
 - A natural disaster causes damage to the exempt cemetery which necessitates the relocation; or
 - More than 75 years have elapsed since the interment, entombment, or inurnment at the exempt cemetery and the operator of the exempt cemetery publishes a public notice, once a week for four consecutive weeks, in a newspaper of general circulation within the county in which the exempt cemetery is located.

The public notice must contain the:

- Name of the exempt cemetery;
- Name, address, and telephone number of the representative of the exempt cemetery with whom written objections may be filed;
- Reason and necessity for the relocation;
- Name of the deceased person entombed, interred, or inurned and the date of 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.

An exempt cemetery may relocate a memorial, tomb, or the contents of a tomb if the exempt cemetery does not receive a written objection to the relocation within 30 days after the public notice was published.

A hearing is required if an exempt cemetery receives a written objection from a legally authorized person, as defined in s. 497.005, F.S., about the relocation. If the exempt cemetery is

in a municipality, the hearing must be held before the city council and if not the hearing must be held before the appropriate county commission.

At the hearing, all interested parties must have the opportunity to be heard and be able to introduce testimony. The council or commission must make the determination as to whether to grant or deny the request for the relocation. If granted, the exempt cemetery may proceed with the relocation.

The bill is effective July 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. If the cost is less than \$1.8 million, then the bill is exempt from the mandates provision of the Florida Constitution due to its insignificant fiscal impact.

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 a tomb or memorial. In certain situations if the plan for 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 will have a positive (increase) insignificant impact on 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 a tomb or

memorial. In certain situations if the plan for relocation is objected to, a hearing is required. The notice and hearing process and holding the hearings could cost exempt cemeteries owned by cities or counties to incur costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines the term “memorial” as a structure or thing placed or designed for the memorial of the dead. This definition is broad and would make any person that removes any memorial, even if on private property, subject to being charged with a third degree felony.

The bill includes the term “grave space” which means a space of ground in a cemetery intended to be used for the interment in the ground of human remains in the definition of “tomb.” As a result, a person could be charged with a third degree felony for any destruction to this unused property.

An exempt cemetery may have a contract with decedents that allow the movement of human remains. The bill does not contemplate this.

The bill provides an exempt cemetery with a hearing process if a legally authorized person objects to the relocation of a tomb or memorial after a public notice. The bill does not provide such a process for any other time a legally authorized person objects to an exempt cemetery’s desire to relocate a tomb or memorial.

The bill requires exempt cemeteries to get authorization from a legally authorized person to relocate a tomb or memorial. The bill does not contemplate the situation of an exempt cemetery being unable to find a legally authorized person to obtain written authorization for the relocation.

The bill does not include any criteria for the councils or 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 Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
