

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/CS/SB 220

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Transportation, Tourism, and Economic Development); Governmental Oversight and Accountability Committee; and Senators Cruz, Gibson, Rouson, and others

SUBJECT: Abandoned Cemeteries

DATE: March 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Wells</u>	<u>Hrdlicka</u>	<u>ATD</u>	<u>Recommend: Fav/CS</u>
3.	<u>Wells</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 220 creates a ten-member Task Force on Abandoned African-American Cemeteries. The stated purpose of the task force is to study the extent to which unmarked or abandoned African-American cemeteries and burial grounds exist throughout the state and to develop and recommend strategies for identifying and recording cemeteries and burial grounds while preserving local history and ensuring dignity and respect for the deceased. The task force is required to review the findings and recommendations made by the Task Force on Abandoned and Neglected Cemeteries created pursuant to chapter 98-268, Laws of Florida, and to make recommendations regarding the creation, placement, and maintenance of memorials at sites of the former cemeteries. The Department of State (DOS) must provide administrative and staff support relating to the functions of the task force. The task force must submit a report by March 1, 2021, that details its findings and recommendations. The bill provides for the termination of the task force on July 1, 2021.

The bill also requires the DOS, upon receiving consent of the property owners at the former Zion Cemetery site in Tampa, to partner with the University of South Florida, the Florida Agricultural and Mechanical University, and the Zion Cemetery Archaeological Committee formed under the auspices of the Tampa Housing Authority, to initiate an investigation to determine how many graves remain at the site. The DOS is to contract with the University of South Florida and the Florida Agricultural and Mechanical University for the identification and location of eligible

next of kin. The universities are required to provide the DOS, no later than January 1, 2021, with a list of possible descendants of those buried at the site and, to the extent possible, their contact information.

The Division of Historical Resources of the DOS must ensure that any abandoned African-American Cemetery identified by the task force is listed in the Florida Master Site File and seek placement of an Official Florida Historical Marker at a site with the approval of the land owner.

Subject to specific appropriation, the bill requires the DOS to create, place, and maintain a memorial at the site of the former Zion Cemetery in Tampa and at the site of the former Ridgewood Cemetery at C. Leon High School in Tampa. SB 2500, the Senate's General Appropriations Bill for Fiscal Year 2020-2021, appropriates a total of \$100,000 for this same purpose. See Section VII.

The bill takes effect July 1, 2020.

II. Present Situation:

Task Force Requirements under Section 20.03, Florida Statutes

Section 20.03(8), F.S., defines “task force” to mean an “advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative related to that problem.” This provision specifies that the existence of the task force terminates upon the completion of its assignment. Further, members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation and are authorized to receive only per diem and reimbursement for travel expenses.¹

Florida Law Related to Historic and Abandoned Cemeteries, and to Unmarked Human Remains

Cemetery Regulation

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act, generally regulates funeral and cemetery services.² The act authorizes the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services (DFS) to regulate cemeteries, columbaria, cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.³

Section 497.005(13), F.S., defines the term “cemetery” to mean:

...a place dedicated to and used or intended to be used for the permanent interment of human remains or cremated remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a

¹ Section 20.052(4)(d), F.S.

² See s. 497.001, F.S.

³ Sections 497.101, F.S., and 497.103, F.S.

columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places.

The act allows for the moving of graves – disinterment and reinterment.⁴ Disinterment and reinterment must be made in the physical presence of a licensed funeral director, unless reinterment occurs in the same cemetery.⁵ Further, the funeral director is to obtain written authorization from a legally authorized person or court of competent jurisdiction prior to any disinterment and reinterment. Section 497.005(43), F.S., defines the term “legally authorized person” by providing a priority listing which begins with the decedent (when written inter vivos authorizations and directions are provided by the decedent) and includes relatives of the decedent.⁶ Additionally, the definition provides for other persons who may qualify— such as a public health officer, medical examiner, or county commission – should a family member not exist or be available.⁷ Thus, if a legally authorized person is not available, a court of competent jurisdiction may provide the written authorization prior to the disinterment and reinterment of a dead human body.⁸

There is a large number of abandoned cemeteries in Florida.⁹ Section 497.284, F.S., governs abandoned cemeteries and authorizes counties and municipalities, upon notice to the DFS, to maintain and secure an abandoned cemetery or one that has not been maintained for more than six months. The solicitation of private funds and the expenditure of public funds are authorized for such maintenance and security.¹⁰ These efforts of maintenance and security are statutorily exempt from civil liabilities or penalties for damages to property at the cemetery.¹¹ Additionally, the county or municipality is permitted to maintain an action against the cemetery owner to recover costs for maintenance or security.¹²

Criminal Offenses Concerning Dead Bodies and Graves under Chapter 872, F.S.

In Florida, criminal offenses concerning dead bodies and graves are governed by ch. 872, F.S.¹³ Pursuant to s. 872.02(1), F.S., it is a third degree felony¹⁴ to willfully and knowingly destroy, mutilate, deface, injure, or remove any tomb containing human skeletal remains, any memorials, or anything protecting or ornamenting a tomb, including fences associated with a monument

⁴ See Section 497.384, F.S.

⁵ Section 497.384(1), F.S.

⁶ Section 497.005(43), F.S.

⁷ *Id.*

⁸ Section 497.384(3), F.S.

⁹ See Department of State, Division of Historical Resources, *What are the applicable laws and regulations?*, available at <https://dos.myflorida.com/historical/archaeology/human-remains/abandoned-cemeteries/what-are-the-applicable-laws-and-regulations/> (last visited February 21, 2020).

¹⁰ *Id.*

¹¹ Section 497.284(2), F.S.

¹² Section 497.284(3), F.S.

¹³ Chapter 872, F.S., is entitled “Offenses Concerning Dead Bodies and Graves.”

¹⁴ A third degree felony is punishable by up to 5 years imprisonment and up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

containing human skeletal remains.¹⁵ It is a second degree felony¹⁶ to willfully and knowingly disturb the contents of a grave or tomb.¹⁷ Section 872.02, F.S., specifies that the offenses described above do not apply to any:

- Person acting under the direction or authority of the Division of Historical Resources of the DOS;¹⁸
- Cemetery operating under ch. 497, F.S.;
- Cemetery removing or relocating the contents of a grave or tomb as a response to a natural disaster; or
- Person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents.

A “tomb” includes any mausoleum,¹⁹ columbarium,²⁰ or belowground crypt.²¹

The 1998 Task Force on Abandoned and Neglected Cemeteries

In 1998, prompted by the many neglected and abandoned cemeteries throughout Florida, the Legislature enacted the Cemetery Preservation and Consumer Protection Act (CPCPA).²² The CPCPA mandated and funded the creation of an 11-member Task Force on Abandoned and Neglected Cemeteries (the “1998 Task Force”) within the Department of Banking and Finance.²³ The CPCPA directed the 1998 Task Force to review and report on the status of neglected and abandoned cemeteries and, if necessary, propose legislation to counter this problem.²⁴

The 1998 Task Force submitted its final report on January 15, 1999.²⁵ The Task Force determined that the abandonment and neglect of cemeteries was “sufficiently widespread to warrant government intervention.”²⁶ Specifically, the 1998 Task Force found that:

- The data collected on some 3,580 cemeteries suggested 40 percent to 50 percent of the cemeteries in Florida are abandoned or neglected.
- Lack of funding appears to be a significant factor contributing to the neglect by private, unlicensed cemeteries.

¹⁵ Section 872.02(1), F.S.

¹⁶ A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁷ Section 872.02(2), F.S.

¹⁸ The powers and duties of the Division of Historical Resources of the Department of State are set forth in s. 267.031, F.S. Subject to some limitations, a State Archaeologist, as employed by the Division, may assume jurisdiction over an unmarked human burial site in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts. See s. 872.05(4), (5), and (6), F.S.

¹⁹ Section 497.005(46), F.S., defines a “mausoleum” as “a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains.”

²⁰ Section 497.005(18), F.S., defines a “columbarium” as “a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains.”

²¹ Section 872.02(4), F.S. Section 497.005(4), F.S., defines “belowground crypt” as consisting of “interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod.”

²² See ch. 98-268, L.O.F.

²³ *Id.* at s. 13.

²⁴ *Id.*

²⁵ *Final Report of Task Force on Abandoned and Neglected Cemeteries*, available at <https://www.coj.net/city-council/docs/brcemeteries-1999-statetaskforce-finalreport.aspx> (last visited February 21, 2020).

²⁶ *Id.* at p. 3.

- City and county representatives on the 1998 Task Force verified that neglected cemeteries create problems for citizens and local governments and burden governmental resources.
- Older neglected cemeteries may represent a loss of historic or archeological values.
- Legislation is needed to establish guidelines, definitions, methods of establishing care for neglected and abandoned cemeteries, which agencies will be responsible, the funding mechanism for such projects, as well as a permanent structure to continue the location, identification, protection, preservation, and care of such cemeteries.
- A grants-in-aid type program using matching funds would help ameliorate the problems created by abandoned and neglected cemeteries.
- Funding to address the problems and recommendations in the proposed legislation may be derived from: (1) a one-time appropriation by the legislature; (2) a fee on death certificates; (3) enabling legislation to permit cities and counties to include in their budgets funds for this purpose; and (4) the establishment of a nonprofit corporation within the Department of Banking and Finance to obtain donations.
- It is imperative to stop the proliferation of neglected and abandoned cemeteries.
- The legislature had already established in ch. 872, F.S., protection for all human burial sites and all human remains regardless of whether or not the site is abandoned.²⁷

The 1998 Task Force recommended that it be allowed to continue by either (i) “continu[ing] in its present form for a finite time” to more thoroughly examine the extent of the problems; or (ii) the nonprofit corporation suggested as part of proposed legislation “should continue these functions on a permanent basis.”²⁸ The 1998 Task Force also recommended to:

- Establish that local governments – combined with a statewide approach via the designated agency and nonprofit – are the best way to manage issues created by abandoned and neglected cemeteries.
- Establish that owners of unlicensed cemeteries have a duty to care for their cemeteries in such a manner as to avoid neglect.
- Proscribe abandonment and neglect of cemeteries.
- Establish that a copy of all burial transit permits be filed with the Clerk of Court in the county of burial.
- Establish an easement or right of entry to enter and inspect private cemeteries for officially designated persons other than the next of kin.
- Establish that unlicensed cemeteries be required to post a sign providing notice of the existence of a cemetery at the posted location.
- Prohibit the creation of new cemeteries except under the provisions of Part I of ch. 497, F.S., thereby insuring that a care and maintenance fund is established for each new cemetery.²⁹

The specific findings and recommendations of the 1998 Task Force have not been addressed by subsequent legislation.

²⁷ *Id.* at 7-8.

²⁸ *Id.* at 8.

²⁹ *Id.* at 8-9.

Zion Cemetery

Zion Cemetery, established in 1901, is believed to be Tampa's first cemetery for African-Americans with room for some 800 graves.³⁰ Zion Cemetery disappeared from public view and city maps by 1929.³¹ In 1951, the Tampa Housing Authority started construction on the Robles Park Apartments on land that includes part of the Zion Cemetery site, and construction crews found several unmarked graves and three caskets.³²

The Robles Park Village housing (still owned by the Tampa Housing Authority) and two other commercial businesses owned by two private sector individuals now stand on the land that once was the site of the African-American cemetery. Upon learning that the Zion Cemetery might still lie beneath at least a portion of its Robles Park Village Apartments, the Tampa Housing Authority organized a consultation committee and hired archaeologists to survey its property.³³ In late August 2019, archeologists used a ground-penetrating radar and discovered what they believe to be 126 caskets beneath the Tampa Housing Authority land.³⁴ As of January 2020, archaeologists have identified 314 graves in the 2.5 acre area of the Zion Cemetery: 144 under five buildings in the Robles Park Village; 55 under a wrecking company's tow lot; and 155 under warehouse property. More sites could be identified, as the ground-penetrating radar cannot detect every grave and cannot scan beneath buildings.³⁵

Other Rediscovered Abandoned Cemeteries in the Tampa Area

Due to the rediscovery of several abandoned cemeteries in the area, the Hillsborough County Commission is funding a forensic anthropologist at the University of South Florida to conduct deeper research into where other cemeteries may have been lost over time. The research will include review of historical records, maps, development records, and interviews with residents in the community. The nature of the difficulty with the search includes that some possible sites may be documented in less formal ways than official property records and may not have been evident on the landscape at the time.³⁶

³⁰ Paul Guzzo, *A community, not just Zion Cemetery, disappeared to build homes for whites*, TAMPA BAY TIMES, Nov. 4, 2019, available at <https://www.tampabay.com/news/hillsborough/2019/11/04/a-community-not-just-zion-cemetery-disappeared-to-build-homes-for-whites/#talk-wrapper> (last visited February 21, 2020).

³¹ *Id.*

³² Paul Guzzo, *Key dates in the history of Tampa's forgotten Zion Cemetery*, TAMPA BAY TIMES, Jun. 19, 2019 (Updated Aug. 28, 2019), available at <https://www.tampabay.com/florida/2019/06/23/key-dates-in-the-history-of-tampas-forgotten-zion-cemetery> (last visited February 21, 2020).

³³ Paul Guzzo, *Richard Gonzmart believes no coffins will be found on his Zion Cemetery land*, TAMPA BAY TIMES, Sep. 24, 2019, available at <https://www.tampabay.com/news/hillsborough/2019/09/24/richard-gonzmart-believes-no-coffins-will-be-found-on-his-zion-cemetery-land/> last visited February 21, 2020).

³⁴ *Id.*

³⁵ Paul Guzzo, *115 caskets found on Zion Cemetery land owned by Richard Gonzmart*, TAMPA BAY TIMES, Jan. 7, 2020 (updated Jan. 13, 2020), available at <https://www.tampabay.com/news/hillsborough/2020/01/07/115-caskets-found-on-zion-cemetery-land-owned-by-richard-gonzmart/> (last visited February 21, 2020).

³⁶ Emerald Morrow, *Hillsborough County gets serious about search for lost graves*, WTSP CHANNEL 10 NEWS, January 23, 2020, available at <https://www.wtsp.com/article/news/special-reports/erased/hillsborough-county-gets-serious-about-search-for-lost-graves/67-cc0cdc11-886f-4b05-93b8-c2b4aa6a280e>; and Lauren Rozyla, *USF researchers to help Hillsborough County search for forgotten gravesites*, WFTS TAMPA BAY, January 23, 2020, available at <https://www.abcactionnews.com/news/region-hillsborough/usf-researchers-to-help-hillsborough-county-search-for-forgotten-gravesites> (both sites last visited February 21, 2020).

Searches have recently begun on property within the MacDill Air Force Base for the Port Tampa Cemetery³⁷ and research on the existence and location of the Matri/Colón Cemetery is underway.³⁸

Ridgewood Cemetery

In October 2019, the Hillsborough County School District (HCS D) learned the old Ridgewood Cemetery might have been located at the southeast corner of the King High School campus, which is now occupied by a small building and open land used for the agricultural program.³⁹ Ridgewood was designated as a pauper's cemetery and at least 280 people – mostly African Americans – were interred between 1942 and 1954.⁴⁰

On October 28, the HCS D created an advisory committee, the Historical Response Committee, to determine how to handle the search for unmarked graves at King High School and what to do if they were found. The HCS D hired a geotechnical firm, Geoview, to conduct a survey on the south end of King High School campus using a ground-penetrating radar to look for any signs of the lost Richwood Cemetery on the campus.⁴¹ On November 20, 2019, the HCS D released the data of the ground-penetrating radar survey. The survey of the southern edge of the King High School campus showed evidence of burials, approximately 145 suspected graves. The scan performed on the northeast corner of the campus showed no evidence of burials or graves.⁴²

Historical records generally indicate that there were between 250 and 268 burials at Ridgewood Cemetery. Possible reasons why the radar survey only revealed a total of approximately 145 possible graves include:

- The radar may have more difficulty locating smaller coffins of infants and children.
- Some coffins may have decayed underground preventing detection by scan some 75 years later.
- Some graves may be under the agricultural workshop building.

³⁷ Stephanie Colombini, *Dogs Search For Lost African American Cemetery On MacDill Air Force Base*, WUSF PUBLIC MEDIA, February 18 2020, available at <https://wusfnews.wusf.usf.edu/post/dogs-search-lost-african-american-cemetery-macdill-air-force-base>; and Paul Guzzo, *Records show a black cemetery might lie beneath MacDill Air Force Base*, TAMPA BAY TIMES, Nov. 20, 2019, available at <https://www.tampabay.com/news/hillsborough/2020/01/07/115-caskets-found-on-zion-cemetery-land-owned-by-richard-gonzmart/> (both sites last visited February 21, 2020).

³⁸ Paul Guzzo, *It's called Dead Man's Field. Were bodies ever moved from West Tampa site?*, TAMPA BAY TIMES, Feb. 5, 2020, available at <https://www.tampabay.com/news/tampa/2020/02/05/its-called-deadmans-field-were-bodies-ever-moved-from-west-tampa-site/> (last visited February 21, 2020).

³⁹ Paul Guzzo, *Records show King High gym may have been built atop paupers cemetery*, TAMPA BAY TIMES, Oct. 22, 2019 (updated Oct. 23, 2019), available at <https://www.tampabay.com/news/education/2019/10/22/map-shows-king-high-gym-may-have-been-built-atop-paupers-cemetery> (last visited February 21, 2020).

⁴⁰ Lori Rozsa, *Lost lives, fresh heartache as a black cemetery is found buried under a high school*, WASHINGTON POST, November 24, 2019, available at https://www.washingtonpost.com/national/lost-lives-fresh-heartache-as-a-black-cemetery-is-found-buried-under-a-high-school/2019/11/24/5e755e4a-0ed4-11ea-bf62-eadd5d11f559_story.html (last visited February 21, 2020).

⁴¹ Jordan, Dave, *Forgotten Cemetery under King High School? District Awaits Answers*, SPECTRUM NEWS 9, Oct. 28, 2019, available at <https://www.baynews9.com/fl/tampa/news/2019/10/28/forgotten-cemetery-under-king-high-school--district-awaits-answers> (last visited February 21, 2020).

⁴² Hillsborough County School District, Press Release, *School District Releases Findings from Scans on King High School Property*, Nov. 20, 2019, available at <https://www.sdhc.k12.fl.us/newsdesk/article/1578/school-district-releases-findings-from-scans-on-king-high-school-property> (last visited February 21, 2020).

- Some graves may have been moved to another cemetery.
- Limitations of radar technology.⁴³

The November press release indicates that HCSD will deliver Geoview’s findings to the “county medical examiner and the state archeologist” with the expectation that they will take the thirty days to review the findings.⁴⁴ HCSD indicates that if possession of the land is “turned back over to the school district,” it will work with members of the Historical Response Committee to “discuss proper ways to memorialize the individuals, how best to care for the space and learning opportunities for students at King High School and other schools.”⁴⁵

Fort Brooke Estuary Cemetery

Archeologists, in September 2018, uncovered three grave shafts with human remains during the development of the 50-plus acre Water Street Tampa project. The grave shafts were believed to be of an old military burial ground from the Seminole War era, known as Estuary Cemetery.⁴⁶ The archeologists’ July 2019 report announced that the three grave shafts had human remains, but it did not identify the ancestry and indicated that work could resume on the development site. However, not much more is known about the findings or what may have been discovered due to it being a private site.

III. Effect of Proposed Changes:

Section 1 creates the Task Force on Abandoned African-American Cemeteries to study the extent to which unmarked or abandoned African-American cemeteries and burial grounds exist throughout the state and develop and recommend strategies for identifying and recording cemeteries and burial grounds while preserving local history and ensuring dignity and respect for the deceased.

The task force is to be chaired by the Secretary of State, or his or her designee, and is composed of:

- A representative of the Bureau of Archaeological Research of the Division of Historical Resources, appointed by the Secretary of State;
- One person nominated by the President of the Florida State Conference of the National Association for the Advancement of Colored People and appointed by the Secretary of State;
- One representative of the Florida Council of Churches, nominated by the executive director of the council and appointed by the Secretary of State;
- One representative of the Florida African American Heritage Preservation Network, nominated by the executive director of the network and appointed by the Secretary of State;
- One representative of the Florida Public Archaeology Network, appointed by the Secretary of State;
- One representative of the cemetery industry, appointed by the Secretary of State;

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Paul Guzzo, *More lost cemeteries will be found, historians say*, TAMPA BAY TIMES, Oct. 28, 2019 (Updated Jan. 13, 2020), available at <https://www.tampabay.com/news/tampa/2019/10/28/more-lost-cemeteries-will-be-found-historians-say> (last visited February 21, 2020).

- One member of the Senate, appointed by the President of the Senate;
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives; and
- One elected official from a local government, appointed by the Secretary of State.

The task force is required to hold its first meeting by August 1, 2020, and meet as many times as it deems necessary to complete its duties. The task force is required to:

- Review the findings and recommendations made by the 1998 Task Force and any legislative or administrative action that was taken in response to the task force's findings and recommendations;
- Examine the adequacy of current practices regarding the preservation of unmarked and abandoned African-American cemeteries and burial grounds and identify any challenges unique to African-American cemeteries and burial grounds;
- Identify locations of unmarked and abandoned African-American cemeteries and burial grounds throughout the state and propose strategies, including any proposed legislation, for the preservation and evaluation of such sites; and
- Make recommendations regarding standards for the creation, placement, and maintenance of memorials at any identified locations of unmarked and abandoned African-American cemetery or burial ground throughout the state.

The task force is required to submit a report by March 1, 2021, detailing its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

This section expires on July 1, 2021.

Section 2 requires the DOS, upon receiving consent of the property owners at the former Zion Cemetery site in Tampa, to partner with the University of South Florida (USF), the Florida Agricultural and Mechanical University (FAMU), and the Zion Cemetery Archaeological Committee formed under the auspices of the Tampa Housing Authority to continue an investigation to determine how many graves remain at the site. Any historical resource, record, archive, artifact, public research, or medical record recovered through the course of the investigation by USF or FAMU shall remain in the custody of either university for archiving and preservation until the DOS requests custody of such resource, record, archive, artifact, public research, or medical record.

This section requires the DOS is to contract with USF and FAMU for the identification and location of eligible next of kin of those buried at the site.

By January 1, 2021, the universities must provide the DOS with a list of possible descendants of those buried at the site and, to the extent possible, their contact information. For any identification of next of kin occurring on or after January 1, 2021, the universities must provide contact information of the next of kin to the DOS.

Section 3 provides that the Division of Historical Resources (Division) of the DOS must ensure that any abandoned African-American cemetery identified by the task force is listed on the Florida Master Site File. Upon such a cemetery's listing in the Florida Master Site, the division is required to – in lieu of the normal application process – seek placement of an Official Florida Historical Marker at a site with approval of the property owner. The bill permits a person or organization affiliated with an abandoned cemetery to assist the division in researching the history of such a site in the preparation of a historical marker's creation and placement. The costs for the creation and placement of a historical marker are to be borne by the division.

Section 4 requires the DOS, subject to appropriation, to create, place, and maintain a memorial at the site of the former Zion Cemetery in Tampa and at the site of the former Ridgewood Cemetery at C. Leon High School in Tampa.

Section 5 provides that the bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**Task Force**

Because the bill is silent as to compensation and travel expense, s. 20.052(4)(d), F.S., governs and the task force members will not be entitled to additional compensation but are authorized to receive per diem and reimbursement for travel expenses as provided in s. 112.061, F.S. These costs will be borne by the DOS as the appointing authority of the task force members.

The DOS will incur an indeterminate amount of administrative expenses as the agency providing administrative and technical support for the task force.

Cemeteries – Memorials and Placement of Florida Historical Markers

SB 2500, the Senate General Appropriations Bill, includes specific appropriations for the memorials at the Zion Cemetery and the Ridgewood Cemetery of \$50,000 of nonrecurring funds from the General Revenue Fund for each memorial.⁴⁷

The DOS will incur costs each time it is required to place an Official Florida Historical Marker at a site of a cemetery identified by the task force. Currently, the cost of a Florida Historical Marker is determined by the amount of text. For a marker with the same text on both sides of the marker, the cost is \$2,010. For a double-sided marker with different text appearing on both sides of the marker, the cost is \$2,330.⁴⁸

USF, FAMU, and the Zion Cemetery Archaeological Committee may incur an indeterminate amount of administrative expenses in partnering with the DOS to determine how many graves remain at the site of the former Zion Cemetery and the identification and location of decedents.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Based on the statements made in the HCSD November press release regarding notification to the medical examiner and state archeologist and the possible return of jurisdiction of the property to HCSD, it appears HCSD is treating the burials found on the King High School campus as “unmarked human burials” pursuant to s. 872.05, F.S. The term “unmarked human burial” is defined to mean:

⁴⁷ Specific Appropriation 3153A, proviso (*Fighting for the Forgotten: Zion Cemetery Memorial – Tampa (Senate Form 2574)* and *Fighting for the Forgotten: Ridgewood Cemetery Memorial – Tampa (Senate Form 2576)*), s. 6, SB 2500 (2020).

⁴⁸ See DOS, Division of Historical Resources, *Historical Markers FAQ*, available at <https://dos.myflorida.com/historical/about/division-faqs/marker/> (last visited February 21, 2020).

...any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone, or other structure or thing placed or designed as a memorial of the dead.⁴⁹

When an unmarked human burial is discovered – other than during an authorized archaeological excavation⁵⁰ – all disturbing activity of the burial must cease and the district medical examiner must be notified. Activity may not resume until authorized by the district medical examiner or the State Archaeologist.⁵¹ If the district medical examiner determines the unmarked human burial “may be involved in a legal investigation or represents the burial of an individual who has been dead less than 75 years,” he or she must “assume jurisdiction over and responsibility for the location of the burials.”⁵² The examiner is given 30 days after notification of the burial to determine whether he or she will maintain jurisdiction or refer the matter to the State Archaeologist.⁵³

If the district medical examiner finds the human burial is “not involved in a legal investigation and represents the burial of an individual who has been dead 75 years or more,” he or she must notify the State Archaeologist, and the Division of Historical Resources of the Department of State may assume jurisdiction over and responsibility for the burial.⁵⁴

The division is authorized to assume jurisdiction over and responsibility for an unmarked human burial in order to initiate efforts for the proper protection of the burial and the human remains and associated burial artifacts.⁵⁵ Upon assuming jurisdiction, the State Archaeologist must determine whether the burial is historically, archaeologically, or scientifically significant. If it is deemed to be significant, reinterment may not occur until the remains have been examined by a human skeletal analyst designated by the State Archaeologist.⁵⁶ Additionally, the State Archaeologist must make reasonable efforts to identify and locate a person who can establish kinship, tribal, community, or ethnic relationships with the remains that constitute the burial.⁵⁷ If unable to establish such relationships, he or she shall consult with persons with relevant experience.⁵⁸

⁴⁹ Section 872.05(2)(f), F.S.

⁵⁰ Section 872.05(5), F.S., provides for a similar process if an unmarked human burial is discovered during an authorized archeological excavation.

⁵¹ Section 872.05(4), F.S.

⁵² Section 872.05(4)(a), F.S.

⁵³ *Id.*

⁵⁴ Section 872.05(4)(c), F.S.

⁵⁵ Section 872.05(6), F.S.

⁵⁶ Section 872.05(6)(a), F.S.

⁵⁷ Section 872.05(6)(b), F.S.

⁵⁸ Section 872.05(6)(c), F.S.

The November press release states that HCSD provided notice to the medical examiner and State Archeologist on the same day as the release – November 21, 2019.⁵⁹ Thus, the medical examiner had 30 days (until December 23, 2019) to make a determination regarding jurisdiction and referral to the State Archeologist.⁶⁰ On December 20, 2019, the Hillsborough County Medical Examiner turned the matter over to the State Archeologist.⁶¹

VIII. Statutes Affected:

This bill does not amend 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/CS by Appropriations on March 3, 2020:

The committee substitute:

- Increases the number of members of the task force from seven to ten.
- Requires the task force to make recommendations for standards for the creation, placement, and maintenance of a memorial at any identified locations of unmarked and abandoned African-American cemetery or burial ground throughout the state, instead of for memorials at specific locations.
- Removes the \$50,000 appropriation for the former Zion Cemetery in Tampa and \$50,000 appropriation for the former Ridgewood Cemetery at C. Leon King High School in Tampa, and instead requires the DOS to create such memorials subject to specific appropriation.

CS by Governmental Oversight and Accountability on December 9, 2019:

The committee substitute:

- Provides that the task force make a recommendation on the creation, placement, and maintenance of a memorial at the site of the former Ridgewood Cemetery in Tampa.
- Eliminates any reference to exhumation of remains.
- Requires the DOS to partner with FAMU and Zion Cemetery Archaeological Committee as well as USF to determine the number of graves that remain at the site.
- Requires any historical resource recovered by USF or FAMU must remain in the custody of either university until DOS takes custody.
- Requires DOS to contract with USF and FAMU for the identification and location of eligible next of kin.
- Requires the DOS to list in the Florida Master Site File any abandoned African-American Cemeteries identified by the task force. Upon such listing, the DOS must

⁵⁹ Hillsborough County School District, Press Release, *School District Releases Findings from Scans on King High School Property*, Nov. 20, 2019, available at <https://www.sdhc.k12.fl.us/newsdesk/article/1578/school-district-releases-findings-from-scans-on-king-high-school-property> (last visited February 21, 2020).

⁶⁰ Section 872.05(4)(a), F.S.

⁶¹ Hillsborough County, *Hillsborough County Medical Examiner Refers Ridgewood Cemetery Conclusions to State Archaeologist*, Dec. 20, 2019, available at <https://www.hillsboroughcounty.org/en/media-center/press-releases/2019/12/20/medical-examiner-refers-ridgewood-cemetery-conclusions-to-state-archaeologist> (last visited February 21, 2020).

seek placement of an Official Florida Historical Marker at a site with the costs of the historical marker's creation and placement being borne by DOS.

- Appropriates \$100,000, with \$50,000 allocated for a memorial at the site of the former Zion Cemetery and \$50,000 allocated for a memorial at the site of the former Ridgewood Cemetery.

B. Amendments:

None.

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