

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 Governmental Oversight and Accountability

BILL: SB 220

INTRODUCER: Senator Cruz and others

SUBJECT: Abandoned Cemeteries

DATE: December 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Pre-meeting
2.			ATD	
3.			AP	

I. Summary:

SB 220 creates a seven-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 a memorial at the site of the former Zion Cemetery in Tampa and the location of a site for the reinterment of any unidentified remains that are retrieved from the former Zion Cemetery site. 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 to initiate an investigation to determine how many graves remain at the site. The DOS is to contract with the University of South Florida for the identification and location of eligible next of kin of any recovered human remains and the update of information on associated artifacts and materials.

The bill appropriates \$500,000 from the General Revenue Fund to the DOS to implement this act. From these funds, \$450,000 must be used for costs associated with the disinterment and reinterment of any remains retrieved from the former Zion Cemetery site. The other \$50,000 must be used for the creation, placement, and maintenance of a memorial at the Zion Cemetery site. These funds may be used in either fiscal years 2020-2021 or 2021-2022.

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 470, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (the 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 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 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 497.05(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

¹ Section 20.052(2)(d), F.S.

² See Section 497.001, F.S.

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

⁴ See Section 497.384, F.S.

⁵ Section 487.384(1), F.S.

⁶ Section 497.05(43), F.S.

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 Department of Financial Services, 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 Chapter 872, F.S.¹³ Section 872.02(1), F.S., provides that it is a third degree felony¹⁴ to willfully and knowingly destroy, mutilate, deface, injure or remove any tomb¹⁵ containing human skeletal remains and disturb memorials including fences associated with a monument containing human skeletal remains¹⁶ It is a second degree felony¹⁷ to willfully and knowingly disturb the contents of a grave or tomb.¹⁸ 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;¹⁹
- Cemeteries operating under chapter 497, F.S.;
- Any cemeteries removing or relocating the contents of a grave or tomb as a response to a natural disaster; or
- Any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents as set forth in subsection (1).

⁷ *Id.*

⁸ Section 497.384(3), F.S.

⁹ *See What are the applicable laws and regulations?* <https://dos.myflorida.com/historical/archaeology/human-remains/abandoned-cemeteries/what-are-the-applicable-laws-and-regulations/> (last visited November 15, 2019).

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 five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹⁵ This section provides that the term “tomb” includes any mausoleum, columbarium, or below ground crypt.

¹⁶ Section 872.02(1), F.S.

¹⁷ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹⁸ Section 872.02(2), F.S.

¹⁹ 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 ss. 872.05(4), (5), and (6), F.S.

The section provides that a “tomb” includes any mausoleum,²⁰ columbarium,²¹ or below ground crypt.”²²

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).²³ 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.²⁴ 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.²⁵

The 1998 Task Force submitted its Final Report on January 15, 1999.²⁶ The Task Force determined that the abandonment and neglect of cemeteries was “sufficiently wide spread to warrant government intervention.”²⁷ Specifically, the Task Force found that:

- The data collected on some 3,580 cemeteries suggested 40% to 50% 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.
- 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, agencies responsible for providing such care, 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 recommends 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 non-profit corporation within the Department of Banking and Finance to obtain donations.
- It is imperative to stop the proliferation of neglected and abandoned cemeteries.

²⁰ 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.”

²¹ 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.”

²² Section 872.02(4), F.S.

²³ See Chapter 98-268, L.O.F.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Final Report of Task Force on Abandoned and Neglected Cemeteries*, available at <https://www.coj.net/city-council/docs/brccemeteries-1999-statetaskforce-finalreport.aspx> (last visited November 4, 2019).

²⁷ *Id.* at p. 3.

- The legislature has already established in Chapter 872 protection for all human burial sites and all human remains regardless of whether or not the site is abandoned.²⁸

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 “non-profit corporation” suggested as part of proposed legislation “should continue these functions on a permanent basis.”²⁹ The 1998 Task Force also recommended to:

- Establish that local governments - combined with a statewide approach via the designated agency and non-profit - 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.
- Proscribe the creation of new cemeteries except under the provisions of Part I of Chapter 497, thereby insuring that a care and maintenance fund is established for each new cemetery.³⁰

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

Arthur G. Dozier School for Boys

From January 1, 1900, to June 30, 2011, the state operated a reform school known as Arthur G. Dozier School for Boys (Dozier) in the panhandle town of Marianna. Children were sent to the school for serious crimes but also for “incurability,” “truancy,” and “dependency.”³¹ In 2005, former students of the school began to publish accounts of the abuse they experienced at Dozier.³² In 2008, Governor Charlie Crist directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.³³ Former students of Dozier alleged

²⁸ *Id.* at 7-8.

²⁹ *Id.* at 8.

³⁰ *Id.* at 8-9.

³¹ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida, pg. 12 (Jan. 18, 2016) (on file with the Senate Governmental Oversight and Accountability Committee).

³² *Id.* at 30. The men who had been sent to Dozier from the late 1950’s through the 1960’s organized themselves as “The White House Boys Survivors Organization.” 8 Office of Executive Investigations, Florida Department of Law Enforcement, FDLE Investigative Report (May 14, 2009); available at <http://thewhitehouseboys.com/fdlereport.html> (last visited December 6, 2019).

³³ Office of Executive Investigations, Florida Department of Law Enforcement, FDLE Investigative Report (May 14, 2009); available at <http://thewhitehouseboys.com/fdlereport.html> (last visited December 6, 2019).

that fellow students who died as a result of abuse were buried at the school cemetery.³⁴ The University of South Florida (USF) subsequently conducted an investigation, which included excavations and exhumations.³⁵

The USF received funding to investigate and determine the location of the children buried at Dozier.³⁶ Funding was provided by the Legislature, USF, a grant from the National Institute of Justice, the U.S. Department of Justice, and private donations.³⁷ During the course of its investigation, USF excavated 55 graves at Dozier school, discovering 51 sets of human remains.³⁸

In 2016, the Legislature passed CS/CS/SB 708³⁹ to create the Dozier Task Force under the Department of State (DOS). The Legislature approved a payment of up to \$7,500 for each child whose body was buried at and exhumed from the Dozier School, for funeral, reinterment and grave marker expenses. Additionally, the legislation required (i) DOS to contract with the USF to identify and locate eligible next of kin for the children; and (ii) submit a report by February 1, 2018, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives regarding payments and reimbursements made for these expenses.

To fund these provisions, the bill appropriated from the General Revenue Fund \$500,000 in nonrecurring funds to the Department. The legislation directed any amount remaining as of July 1, 2017, to revert back to General Revenue and be reappropriated for the same purpose in the 2017-2018 fiscal year.

The DOS's 2018 report shows it processed two reimbursements to family members and three direct provider payments to funeral homes for allowable expenses under the law, totaling \$16,168.05.

Zion Cemetery

Zion Cemetery, established in 1901, is believed to be Tampa's first cemetery for African-Americans with room for some 800 graves.⁴⁰ Zion Cemetery disappeared from public view and city maps by 1929.⁴¹ 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.⁴²

³⁴ *Id.* at 1

³⁵ *Id.* at 4.

³⁶ Kimmerle, *supra* note 31, at 11.

³⁷ *Id.* at 4.

³⁸ *Id.* at 11.

³⁹ Chapter 2016-163, Laws of Fla. (CS/CS/SB 708).

⁴⁰ Paul Guzzo, *A community, not just Zion Cemetery, disappeared to build homes for whites*, TAMPA BAY TIMES, Nov. 4, 2019, <https://www.tampabay.com/news/hillsborough/2019/11/04/a-community-not-just-zion-cemetery-disappeared-to-build-homes-for-whites/#talk-wrapper>.

⁴¹ *Id.*

⁴² Paul Guzzo, *Key dates in the history of Tampa's forgotten Zion Cemetery*, TAMPA BAY TIMES, Jun. 19, 2019 (Updated Aug. 28, 2019) <https://www.tampabay.com/florida/2019/06/23/key-dates-in-the-history-of-tampas-forgotten-zion-cemetery>.

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.⁴³ In late August, archeologists used a ground-penetrating radar and discovered what they believe to be 126 caskets beneath the Tampa Housing Authority land.⁴⁴ The Tampa Housing Authority has begun the process of moving 29 families who occupy five buildings within the housing complex atop where Zion Cemetery is believed to sit underground.⁴⁵

Other Rediscovered Abandoned Cemeteries in the Tampa Area

Ridgewood Cemetery

Just last month, the Hillsborough County School District (HCS D) learned the old Ridgewood Cemetery may 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.⁴⁶ Ridgewood was designated as a pauper's cemetery and at least 280 people – mostly African Americans – were interred between 1942 and 1954.⁴⁷

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.⁴⁸ On November 20, 2019, the HCS D released the of the ground penetrating radar survey (November Press Release).⁴⁹ The survey of the southern edge of the King High School campus showed evidence of burials, approximately 145 suspected graves.⁵⁰ The scan performed on the northeast corner of the campus showed no evidence of burials or graves.⁵¹

⁴³ Paul Guzzo, *Richard Gonzmart believes no coffins will be found on his Zion Cemetery land*, TAMPA BAY TIMES, Sep. 24, 2019, <http://ttt-hiweb.newscyclecloud.com/news/hillsborough/2019/09/24/richard-gonzmart-believes-no-coffins-will-be-found-on-his-zion-cemetery-land>.

⁴⁴ *Id.*

⁴⁵ Divya Kumar, *Tenant leaders seek quicker relocation for people living near Zion Cemetery*, TAMPA BAY TIMES, Oct. 10, 2019, <https://www.tampabay.com/news/tampa/2019/10/10/tenant-leaders-look-for-quicker-relocation-for-people-living-near-zion-cemetery>.

⁴⁶ Paul Guzzo, *Records show King High gym may have been built atop paupers cemetery*, TAMPA BAY TIMES, Oct. 22, 2019 (updated Oct. 23, 2019), <https://www.tampabay.com/news/education/2019/10/22/map-shows-king-high-gym-may-have-been-built-atop-paupers-cemetery>.

⁴⁷ Lori Rozsa, *Lost lives, fresh heartache as a black cemetery is found buried under a high school*, WASHINGTON POST, November 24, 2019, 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.

⁴⁸ Jordan, Dave, *Forgotten Cemetery Under King High School? District Awaits Answers*, SPECTRUM NEWS 9, Oct. 28, 2019, <https://www.baynews9.com/fl/tampa/news/2019/10/28/forgotten-cemetery-under-king-high-school--district-awaits-answers>.

⁴⁹ Hillsborough County School District, Press Release, *School District Releases Findings from Scans on King High School Property*, <https://www.sdhc.k12.fl.us/newsdesk/article/1578/school-district-releases-findings-from-scans-on-king-high-school-property> (last visited November 21, 2019).

⁵⁰ *Id.*

⁵¹ *Id.*

Historical records generally indicate that there were between 250 and 268 burials at Ridgewood Cemetery.⁵² 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.
- Some graves may have been moved to another cemetery.
- Limitations of radar technology.⁵³

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.⁵⁴ 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.”⁵⁵

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.⁵⁶ The grave shafts were believed to be of an old military burial ground from the Seminole War era, known as Estuary Cemetery.⁵⁷ 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 developing and recommending 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;

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See *supra* note 49.

⁵⁶ Paul Guzzo, *More lost cemeteries will be found, historians say*, TAMPA BAY TIMES, Oct. 28, 2019, <https://www.tampabay.com/news/tampa/2019/10/28/more-lost-cemeteries-will-be-found-historians-say>.

⁵⁷ *Id.*

- 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; and
- One representative of the cemetery industry, appointed by the Secretary of State.

The task force is required to hold its first meeting by August 1, 2020, and shall 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 the creation, placement, and maintenance of a memorial at the site of the former Zion Cemetery in Tampa and the location of a site for the reinterment of any unidentified or unclaimed remains that are retrieved from the former Zion Cemetery site.

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 USF to initiate 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 USF's investigation shall remain in the custody of the university for archiving and preservation until the DOS requests custody of such resource, record, archive, artifact, public research, or medical record.

This section provides that any human remains exhumed from the former Zion Cemetery site must remain in the custody of the university for identification purposes until the remains are returned to the next of kin or reburied pursuant to this act. The DOS is required to contract with USF for the identification and location of eligible next of kin of any recovered human remains and the update of information on associated artifacts and materials.

By January 1, 2021, USF must provide the Department of State with contact information for the next of kin for each set of human remains returned to a next of kin. For any identification occurring on or after January 1, 2021, USF must provide location information of the next of kin to the DOS at least 5 days before returning the human remains to the next of kin.

The DOS must reimburse the next of kin or pay directly to the provider up to \$7,500 for funeral, reinterment, and grave marker expenses for each person whose body was buried at and exhumed, or otherwise recovered, from the former Zion Cemetery site. To receive reimbursement, the next of kin must submit to the DOS receipts for, or documentation of, expenses and if expenses are paid directly to the provider, the funeral home or other similar entity must submit an invoice to the DOS for the cost of the person's funeral, reinterment, and grave marker expenses. Any payment must be made pursuant to s. 215.422, F.S. (relating to prompt payment of invoices). A charitable donation made toward funeral, reinterment, and grave marker expenses is not eligible for reimbursement.

The DOS is required to submit a report by February 1, 2022, to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives regarding any payments and reimbursements made pursuant to this section.

The DOS is granted rulemaking authority to implement this section.

Section 3 provides that the sum of \$500,000 in nonrecurring funds shall be appropriated from the General Revenue Fund to the DOS, for the 2020-2021 fiscal year, for the purpose of implementing this act with:

- \$50,000 being allocated for the creation, placement, and maintenance of a memorial at the site of the former Zion Cemetery in Tampa, and
- \$450,000 being allocated to the Bureau of Archaeological Research of the Division of Historical Resources for costs associated with the disinterment and reinterment of any remains retrieved at the former Zion Cemetery site.

Any funds remaining unexpended or unencumbered from this appropriation as of July 1, 2021, are to revert and be reappropriated for the same purpose in the 2021-2022 fiscal year.

Section 4 provides that the act will take effect 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:

Under current law, the cost of exhumation and reinterment is borne by the land owner and potentially the surviving family members of the deceased. To the extent this bill directs state agencies (DOS and USF) to exhume bodies or appropriates state funds to cover the costs of reinterment, the costs have shifted from the landowners to the state.

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.

Zion Cemetery

The bill appropriates \$500,000 to DOS with \$50,000 being allocated for a memorial at the site of the former Zion Cemetery in Tampa and 450,000 allocated for costs associated with the disinterment and reinterment of any remains retrieved at the former Zion Cemetery site.

If USF enters into a partnership with the DOS relating to exhumation at Zion Cemetery, USF will incur costs that are not funded in the bill.

To the extent DOS undertakes exhumations at Zion Cemetery, DOS will incur costs relating to its activities, including costs to seek court permission to exhume the remains.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Based on the statements made in the 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:

“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.”⁵⁸

When an unmarked human burial is discovered – other than during an authorized archaeological excavation⁵⁹ – all disturbing activity of the burial must cease, and the district medical examiner must be notified.⁶⁰ Activity may not resume until authorized by the district medical examiner or the State Archaeologist.⁶¹ 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.”⁶² 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.⁶³

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 (Division) of the Department of State may assume jurisdiction over and responsibility for the burial.⁶⁴

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.⁶⁵ Upon assuming jurisdiction, the State Archaeologist must

⁵⁸ Section 872.05(2)(f), F.S.

⁵⁹ Section 872.05(5), F.S., provides for a similar process if an unmarked human burial is discovered during an authorized archeological excavation.

⁶⁰ Section 872.05(4), F.S.

⁶¹ *Id.*

⁶² Section 872.05(4)(a), F.S.

⁶³ *Id.*

⁶⁴ Section 872.05(4)(c), F.S.

⁶⁵ Section 872.05(6), F.S.

determine whether the burial is historically, archaeologically, or scientifically significant.⁶⁶ 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.⁶⁷ Additionally, the State Archaeologist must make reasonable efforts to identify and locate person who can establish kinship, tribal, community, or ethnic relationships with the remains which constitute the burial.⁶⁸ If unable to establish such relationships, he or she he or she shall consult with persons with relevant experience.⁶⁹

The November Press Release instructs that HCSD provided notice to the medical examiner on that same day - November 21, 2019. Thus, the medical must make a determination regarding jurisdiction and referral to the State Archeologist on or before Monday, December 23, 2019.⁷⁰

VIII. Statutes Affected:

This bill does not amend 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.

⁶⁶ Section 872.05(6)(a), F.S.

⁶⁷ *Id.*

⁶⁸ Section 872.05(6)(b), F.S.

⁶⁹ Section 872.05(6)(c), F.S.

⁷⁰ Section 872.05(4)(a), F.S.