

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 37 Abandoned Cemeteries

**SPONSOR(S):** Infrastructure & Tourism Appropriations Subcommittee; Government Operations Subcommittee; Driskell and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 222

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**FINAL HOUSE FLOOR ACTION:** 117 Y's      0 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 37 passed the House on April 21, 2021, and subsequently passed the Senate on April 29, 2021.

The Division of Historical Resources, established within the Department of State (DOS), is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.

The bill creates a ten-member Task Force on Abandoned African-American Cemeteries (task force), adjunct to DOS, to study the extent that 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 must hold its first meeting by August 1, 2021, and may meet as many times as it deems necessary to complete its duties. The task force must submit a report by January 1, 2022, detailing its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives.

The bill provides that the section establishing the task force expires on March 11, 2022.

The bill will have a negative, but insignificant, impact to DOS. These costs can be absorbed within existing resources.

The bill was approved by the Governor on June 4, 2021, ch. 2021-60, L.O.F., and will become effective on July 1, 2021.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Background**

##### Task Force Requirements

Florida law defines “task force” to mean an advisory body created without specific statutory enactment for a time not to exceed one year or created by specific statutory enactment for a time not to exceed three years and appointed to study a specific problem and recommend a solution or policy alternative related to that problem. Its existence terminates upon the completion of its assignment.<sup>1</sup> Members of a task force, 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.<sup>2</sup>

##### Historic and Abandoned Cemeteries and Unmarked Human Remains

##### *Cemetery Regulation*

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (the Act), generally regulates funeral and cemetery services.<sup>3</sup> The Act authorizes the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services (DFS) to regulate cemeteries, columbaria,<sup>4</sup> cremation services, mausoleums, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.<sup>5</sup>

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.<sup>6</sup> Disinterment and reinterment must be made in the physical presence of a licensed funeral director, unless reinterment occurs in the same cemetery.<sup>7</sup> The funeral director is to obtain written authorization from a legally authorized person<sup>8</sup> or court of competent jurisdiction prior to any disinterment and reinterment of a dead human body.<sup>9</sup>

Counties and municipalities are authorized, upon notice to DFS, to maintain and secure an abandoned cemetery or one that has not been maintained for more than six months.<sup>10</sup> The solicitation of private funds and the expenditure of public funds are authorized for maintenance and security of abandoned cemeteries.<sup>11</sup> These efforts of maintenance and security are statutorily exempt from civil liabilities or

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<sup>1</sup> Section 20.03(8), F.S.

<sup>2</sup> Section 20.052(2)(d), F.S.

<sup>3</sup> See Section 497.001, F.S.

<sup>4</sup> Section 497.005(18), F.S., defines “columbarium” to mean a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains.

<sup>5</sup> Sections 497.101 and 497.103, F.S.

<sup>6</sup> See Section 497.384, F.S.

<sup>7</sup> Section 487.384(1), F.S.

<sup>8</sup> Section 497.005(43), F.S., defines the term “legally authorized person” as a priority list that begins with the authorizations and directions of the decedent and can include relatives, guardians, or personal representatives of the decedent.

<sup>9</sup> Section 487.384(3), F.S.

<sup>10</sup> Section 497.284(1), F.S.

<sup>11</sup> *Id.*

penalties for damages to property at the cemetery.<sup>12</sup> Additionally, the county or municipality is permitted to maintain an action against the cemetery owner to recover costs for maintenance or security.<sup>13</sup>

### *Criminal Offenses Concerning Dead Bodies and Graves*

Chapter 872, F.S., governs criminal offenses concerning dead bodies and graves. The law provides that it is a third degree felony<sup>14</sup> to willfully and knowingly destroy, mutilate, deface, injure or remove any tomb<sup>15</sup> containing human skeletal remains and disturb memorials including fences associated with a monument containing human skeletal remains.<sup>16</sup> It is a second degree felony<sup>17</sup> to willfully and knowingly disturb the contents of a grave or tomb;<sup>18</sup> however, these offenses do not apply to:<sup>19</sup>

- Any person acting under the direction or authority of the Division of Historical Resources within the Department of State (DOS);<sup>20</sup>
- 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.

### Department of State

The head of DOS is the Secretary of State (Secretary) who is appointed by and serves at the pleasure of the Governor, and is confirmed by the Senate. The Secretary must perform the functions conferred by the State Constitution upon the custodian of state records.<sup>21</sup> The Secretary also serves as the state protocol officer and, in consultation with the Governor and other governmental officials, develops, maintains, publishes, and distributes the state protocol manual.<sup>22</sup>

Six divisions are established within DOS, including the Division of Historical Resources (Division).<sup>23</sup>

### *Division of Historical Resources*

The Division is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.<sup>24</sup> Some of the Division's efforts include:<sup>25</sup>

- Developing a comprehensive statewide historic preservation plan;
- Directing and conducting a comprehensive statewide survey and maintaining an inventory of historic resources;
- Ensuring that historic resources are taken into consideration at all levels of planning and development; and
- Providing public information, education, and technical assistance relating to historic preservation programs.

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<sup>12</sup> Section 497.284(2), F.S.

<sup>13</sup> Section 497.284(3), F.S.

<sup>14</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 through 775.084, F.S.

<sup>15</sup> This section provides that the term "tomb" includes any mausoleum, columbarium, or below ground crypt.

<sup>16</sup> Section 872.02(1)(a), F.S.

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

<sup>18</sup> Section 872.02(2), F.S.

<sup>19</sup> Section 872.02(3), F.S.

<sup>20</sup> The powers and duties of the Division of Historical Resources within DOS 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)-(6), F.S.

<sup>21</sup> Section 20.10(1), F.S.

<sup>22</sup> Section 15.01(1), F.S.

<sup>23</sup> Section 20.10(2), F.S.

<sup>24</sup> Section 267.031, F.S.

<sup>25</sup> Section 267.031(5)(a), (b), (d), and (f), F.S.

### 1998 Task Force on Abandoned and Neglected Cemeteries

In 1998, the Legislature enacted the Cemetery Preservation and Consumer Protection Act (CPCPA).<sup>26</sup> The CPCPA mandated and funded the creation of an 11-member Task Force on Abandoned and Neglected Cemeteries (1998 task force) within DFS.<sup>27</sup> 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.<sup>28</sup>

The 1998 task force submitted a final report on January 15, 1999,<sup>29</sup> and determined that the abandonment and neglect of cemeteries was sufficiently widespread to warrant government intervention.<sup>30</sup> Specifically, the 1998 task force found that:

- Forty 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 of private, unlicensed cemeteries.
- 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, and methods of establishing care for neglected and abandoned cemeteries.
- A grants-in-aid type program using matching funds would help to improve the problems created by abandoned and neglected cemeteries.
- Certain funding could be proposed in legislation to address the neglected cemeteries such as a one-time appropriation by the legislature, a fee on death certificates, permitting cities and counties to include funds to address neglected cemeteries in their budgets, and 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.
- In law,<sup>31</sup> there is already protection for all human burial sites and remains regardless if the site is abandoned.<sup>32</sup>

The 1998 task force recommended that either the task force be allowed to continue in its present form for a finite time to more thoroughly examine the extent of the problems or that a non-profit corporation be created to continue these functions on a permanent basis.<sup>33</sup> Additionally, the 1998 task force recommended to:

- Establish that local governments (combined with a statewide approach via a designated agency and non-profit corporation) 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.
- Prohibit 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 that officially designated persons (other than the next of kin) must be given an easement or right of entry to enter and inspect private cemeteries.
- Establish that unlicensed cemeteries be required to post a sign providing notice of the existence of a cemetery at the posted location.

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<sup>26</sup> See Chapter 98-268, L.O.F.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Final Report of Task Force on Abandoned and Neglected Cemeteries* (January 15, 1999), available at <https://www.coj.net/city-council/docs/brcemeteries-1999-statetaskforce-finalreport.aspx> (last visited March 19, 2021).

<sup>30</sup> *Id.* at 3.

<sup>31</sup> Chapter 872, F.S.

<sup>32</sup> Final Report, *supra* at FN 29 at 7-8.

<sup>33</sup> *Id.* at 8.

- 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.<sup>34</sup>

## Abandoned Cemeteries in the Tampa Area

### *Zion Cemetery*

Zion Cemetery, established in 1901, is believed to be Tampa's first cemetery for African-Americans with room for approximately 800 graves.<sup>35</sup> Zion Cemetery disappeared from public view and city maps by 1929.<sup>36</sup> 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.<sup>37</sup>

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.<sup>38</sup> In August 2019, archeologists used a ground-penetrating radar and discovered what they believe to be 126 caskets beneath the Tampa Housing Authority land.<sup>39</sup> The Tampa Housing Authority spent between \$70,000 and \$80,000 to relocate about 29 families who occupied five buildings within the housing complex that sits where Zion Cemetery is believed to be underground.<sup>40</sup>

### *Ridgewood Cemetery*

In October 2019, the Hillsborough County School District (HCSD) learned that 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.<sup>41</sup> Ridgewood was designated as a pauper's cemetery and at least 280 people (mostly African Americans) were buried there between 1942 and 1954.<sup>42</sup>

On October 28, 2019, the HCSD created an advisory committee, named the Historical Response Committee, to determine how to handle the search for unmarked graves at King High School and what to do if unmarked graves were found. The HCSD hired a geotechnical firm 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

<sup>34</sup> *Id.* at 8-9.

<sup>35</sup> Paul Guzzo, *A community, not Just Zion Cemetery, Disappeared to Build Homes for Whites*, TAMPA BAY TIMES, Nov. 4, 2019 (updated Jan. 8, 2020), 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 March 19, 2021).

<sup>36</sup> *Id.*

<sup>37</sup> Paul Guzzo, *Key Dates in the History of Tampa's Forgotten Zion Cemetery*, TAMPA BAY TIMES, Jun. 19, 2019 (updated Jan. 13, 2020), available at <https://www.tampabay.com/florida/2019/06/23/key-dates-in-the-history-of-tampas-forgotten-zion-cemetery> (last visited March 19, 2021).

<sup>38</sup> Paul Guzzo, *Richard Gonzmart Believes no Coffins will be Found on his Zion Cemetery Land*, TAMPA BAY TIMES, Sep. 24, 2019, available at <http://ttt-hiweb.newscyclecloud.com/news/hillsborough/2019/09/24/richard-gonzmart-believes-no-coffins-will-be-found-on-his-zion-cemetery-land> (last visited March 19, 2021).

<sup>39</sup> *Id.*

<sup>40</sup> Emerald Morrow, *Lost African American Grave Discoveries Highlight the Need for Affordable Housing*, 10NEWS WTSP, Feb. 24, 2020; see also Divya Kumar, *Tenant Leaders Seek Quicker Relocation for People Living Near Zion Cemetery*, TAMPA BAY TIMES, Oct. 10, 2019, available at <https://www.tampabay.com/news/tampa/2019/10/10/tenant-leaders-seek-quicker-relocation-for-people-living-near-zion-cemetery> (last visited March 19, 2021).

<sup>41</sup> 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 March 19, 2021).

<sup>42</sup> 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](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 March 19, 2021).

Ridgewood Cemetery on the campus.<sup>43</sup> On November 20, 2019, the HCSD released the results of the survey.<sup>44</sup> The survey of the southern edge of the King High School campus showed evidence of burials of approximately 145 graves;<sup>45</sup> however, there was no evidence of burials or graves on the northeast corner of the campus.

Historical records generally indicate that there were between 250 and 268 burials at Ridgewood Cemetery.<sup>46</sup> Possible reasons why the radar survey only revealed 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.<sup>47</sup>

On November 21, 2019, the HCSD notified the county Medical Examiner in Hillsborough County and the Division of the unmarked human burials<sup>48</sup> found on the King High Campus. When an unmarked human burial is discovered (other than during an authorized archaeological excavation)<sup>49</sup> all disturbing activity of the burial must cease, and the district medical examiner must be notified.<sup>50</sup> Activity may not resume until authorized by the district medical examiner or the state archaeologist.<sup>51</sup>

Almost a year later, the Division informed the HCSD that it does not have jurisdiction unless the cemetery is located on state lands.<sup>52</sup> The cemetery is not located on state lands, thus, jurisdiction was returned to the HCSD. On or about November 3, 2020, the Historical Response Committee met to discuss proper ways to honor the individuals buried at the site, care for the space, and provide learning opportunities to students at King High School and other schools.<sup>53</sup> No decision has yet been announced as to how those buried at Ridgewood will be memorialized.

## Effect of the Bill

The bill creates the Task Force on Abandoned African-American Cemeteries (task force), adjunct to DOS, 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

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<sup>43</sup> Dave Jordan, *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 March 19, 2021).

<sup>44</sup> 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 March 19, 2021).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Section 872.05(2)(f), F.S., defines the term “unmarked human burial” as 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.

<sup>49</sup> Section 872.05(5), F.S., provides for a similar process if an unmarked human burial is discovered during an authorized archeological excavation.

<sup>50</sup> Section 872.05(4), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> Hillsborough County School District, Press Release, *Historical Response Committee Seeks Input for Ridgewood Memorial*, Nov. 3, 2020, available at <https://sdhc.k12.fl.us/newsdesk/article/1795/historical-response-committee-seeks-input-for-ridgewood-memorial> (last visited March 19, 2021).

<sup>53</sup> *Id.*

for the deceased. DOS must provide administrative and staff support relating to the functions of the task force.

The bill provides that the task force is composed of:

- The Secretary of DOS, or his or her designee, as chair.
- The following members appointed by the Secretary:
  - A representative of the Bureau of Archaeological Research of the Division.
  - One person nominated by the President of the Florida State Conference of the National Association for the Advancement of Colored People.
  - One representative of the Florida Council of Churches, nominated by the executive director of the council.
  - One representative of the Florida African American Heritage Preservation Network, nominated by the executive director of the network.
  - One representative of the Florida Public Archaeology Network.
  - One representative of the cemetery industry.
  - One elected official from a local government.
- 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.

The task force must hold its first meeting by August 1, 2021, and may 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 1998 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.
- Make recommendations regarding standards for the creation, placement, and maintenance of a memorial at any identified locations of unmarked and abandoned African-American cemeteries or burial grounds throughout the state.

The task force must submit a report by January 1, 2022, detailing its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leaders of the Senate and the House of Representatives.

The bill provides that the section establishing the task force expires on March 11, 2022.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

Because the bill is silent as to compensation and travel expense, s. 20.052(4)(d), F.S., governs, which means 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 DOS as the administering agency of the task force.

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

These costs can be absorbed within existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.