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**HOUSE BILL 2919**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representative Orcutt

AN ACT Relating to family cemeteries; amending RCW 68.05.090, 68.05.400, 68.20.080, 68.20.140, 68.40.095, and 68.44.180; adding a new section to chapter 68.05 RCW; and adding a new chapter to Title 68 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) There is a family cemetery permit, issued by the board. Subject to the requirements of this chapter, a family cemetery permit authorizes the burial and permanent disposition, on private property, of the human remains of no more than a total of ten individuals, who are all related as required in section 3 of this act.

(2) An individual may submit an application for a family cemetery permit to the board on a form prescribed by the board. An application for a permit must include the following information:

(a) The applicant's name, address, and phone number;

(b) The address and legal description of the property on which the proposed family cemetery will be located;

(c) A legible and accurate map or plat of the property, as required by the board, with reference points to any portion of the property to be dedicated for cemetery purposes; and

(d) Documentation, in a manner required by the board, that the applicant is a record owner of the property and all record owners of the property agree to dedicate a portion or all of the property for cemetery purposes.

(3) There is no application fee, permit issuance fee, or permit transfer fee for a family cemetery permit.

(4) The board may require proof of compliance with section 2 of this act before issuing a family cemetery permit to an applicant.

(5)(a) Once issued, a permit does not expire or require renewal. However, the board may verify a permit holder's compliance with this chapter at any time after the permit is issued and may suspend or cancel a permit for a violation of this title.

(b) A permit may be transferred, upon application to the board, to an individual related to the permit holder to the degree required by section 3 of this act who is a record owner of the property on which the family cemetery is located, in the following circumstances:

(i) Upon the request of both the permit holder and the individual related to the permit holder to the degree required by section 3 of this act who is a record owner of the property; or

(ii) After the death of the permit holder and upon application by the individual related to the permit holder to the degree required by section 3 of this act who is a record owner of the property.

(c) Upon the death of the permit holder, the board may suspend a family cemetery permit until such time as the permit is transferred pursuant to (b) of this subsection (5). If the board does not receive an application to transfer a permit to a new individual within one year of the date of the permit holder's death, the board may cancel the permit.

(6) The following orders or decisions of the board are subject to review pursuant to the administrative procedure act, chapter 34.05 RCW:

(a) An order to enforce a requirement of this chapter;

(b) Denial of an application for permit issuance;

(c) Denial of an application to transfer a permit;

(d) Suspension of a permit; or

(e) Cancellation of a permit.

NEW SECTION. **Sec.**  (1) Prior to issuance of a family cemetery permit, the applicant for a permit must file a map or plat of the portion of the property dedicated for cemetery purposes in the office of the recorder of the county in which all or a portion of the property is situated. The applicant must also file, for record in the county recorder's office, a written declaration of dedication of the property delineated on the plat or map as the family cemetery, dedicating the property exclusively to cemetery purposes.

(2) Upon filing the map or plat and filing of the declaration of record, the dedication is complete for all purposes and thereafter the property dedicated must be held, occupied, and used exclusively as a cemetery and for cemetery purposes, except as otherwise provided by law.

(3) Any part or subdivision of the property so mapped and plotted may, by order of the applicant or permit holder, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased individual and the change is approved by the board.

(4) After property is dedicated to cemetery purposes pursuant to this section, the dedication is not affected by the transfer, suspension, cancellation, or nonuse of the family cemetery permit, by the death of the permit holder, by alienation of the property, by any encumbrance, by sale under execution, or otherwise, except as provided by law.

(5) Dedication of property for cemetery purposes pursuant to this section is not invalid as violating any laws or rules against perpetuities or the suspension of the power of alienation of title to or use of property, to the same extent as a dedication of property to cemetery purposes pursuant to RCW 68.24.080 is not invalid.

(6)(a) Property dedicated to cemetery purposes pursuant to this section must be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of the property pursuant to RCW 68.24.090 and 68.24.100.

(b) For purposes of removing a property's dedication pursuant to RCW 68.24.090 and this subsection, the permit holder may bring the proceeding for removal of the dedication, or, if the permit holder is deceased, if the permit is suspended or cancelled, or if no permit was issued, the record owner or owners of the property encumbered by the dedication may bring the proceeding.

(7)(a) RCW 68.24.160, 68.24.190, 68.24.220, and 68.24.240 apply to property dedicated for cemetery purposes pursuant to this chapter.

(b) Chapter 68.60 RCW applies to property used or dedicated for cemetery purposes pursuant to this chapter.

(8) After dedication under this chapter, and as long as the property remains dedicated for cemetery purposes, a railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility may not be laid out, through, over, or across any part of it without the consent of the permit holder, or, without the consent of the record owner or owners of the property if the permit holder is deceased, a permit was never issued, or the permit is suspended or cancelled.

NEW SECTION. **Sec.**  (1) Subject to RCW 68.50.160 and subsections (2) and (3) of this section, the human remains of the following individuals may be buried or permanently disposed of in a family cemetery:

(a) The permit holder or the permit holder's spouse or registered domestic partner;

(b) Issue of the permit holder or of the permit holder's spouse or registered domestic partner;

(c) Sibling, half-sibling, or stepsibling of the permit holder or of the permit holder's spouse or registered domestic partner;

(d) Parent or stepparent of the permit holder or of the permit holder's spouse or registered domestic partner;

(e) Grandparent or step-grandparent of the permit holder or of the permit holder's spouse or registered domestic partner, or a parent or stepparent of such a grandparent or step-grandparent;

(f) Grandchild or great-grandchild of the permit holder or of the permit holder's spouse or registered domestic partner, and issue of such a grandchild or great-grandchild;

(g) First cousin of the permit holder or of the permit holder's spouse or registered domestic partner, or issue of such a first cousin;

(h) Uncle or aunt of the permit holder or of the permit holder's spouse or registered domestic partner;

(i) Nephew, niece, grandnephew, or grandniece of the permit holder or of the permit holder's spouse or registered domestic partner; or

(j) Spouse or registered domestic partner of any of the individuals listed in (b) through (i) of this subsection (1).

(2) The human remains of no more than a total of ten individuals may be buried or permanently disposed of in a family cemetery authorized pursuant to this chapter.

(3) No burial or permanent disposition of human remains may be made in a family cemetery when a family cemetery license is suspended or cancelled.

NEW SECTION. **Sec.**  (1) A permit holder must comply with all requirements in chapter 70.58 RCW and this code applicable to a person in charge of a premises on which bodies of deceased individuals are permanently disposed of, including but not limited to the requirements in RCW 70.58.260 that a permit be obtained prior to the burial, permanent disposition, or removal of the human remains of an individual, and the requirements pertaining to record retention.

(2) A permit holder must provide written notice to the appropriate local health official of the permit holder's intent to cause the burial or permanent disposition of the human remains in the family cemetery.

(3) The burial or permanent disposition of human remains in a family cemetery must be performed by a person with appropriate professional expertise, as determined by the board.

(4) Before the human remains of an individual are buried or permanently disposed of in a family cemetery, the permit holder must submit a map to the board showing the exact location within the family cemetery where the human remains will be buried or permanently disposed of, in a format required by the board, and the permit holder must pay the fee to the board authorized in section 8 of this act.

NEW SECTION. **Sec.**  The board may adopt rules on the following:

(1) Appropriate documentation to establish that an applicant for a permit is the record owner of the property on which the family cemetery is proposed to be located, and that all record owners of the property agree to dedicate all or a portion of the property for cemetery purposes;

(2) The format and style of maps or plats that must be submitted to the board in accordance with sections 1 and 4 of this act;

(3) Record retention by permit holders, including the types and format of records and documents that permit holders must maintain, and the length of time such records and documents must be maintained;

(4) Reasonable limitations and prohibitions on the siting of a family cemetery related to public health and safety concerns, such as but not limited to the property's proximity to a groundwater source or a flood zone, or the location of the family cemetery on the property relative to neighboring properties;

(5) Procedures a permit holder must follow regarding the burial or permanent disposition of human remains; and

(6) Establishing the people who have the appropriate level of professional expertise who may perform, in consultation with the permit holder, the burial or permanent disposition of human remains at a family cemetery.

NEW SECTION. **Sec.**  No city, town, county, or subdivision of the state may:

(1) Prohibit the use of property within its jurisdiction as a family cemetery if a family cemetery is in compliance with this chapter; or

(2) Require any fee, permit, license, or authorization in order for a person to use property within its jurisdiction as a family cemetery in accordance with this chapter.

NEW SECTION. **Sec.**  (1) The definitions in chapter 68.04 RCW are applicable to this chapter and govern the meaning of terms used in this chapter, except as otherwise provided.

(2) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Board" means the funeral and cemetery board established in RCW 18.39.173.

(b) "Department" means the department of licensing.

(c) "Family cemetery" means a cemetery owned by a permit holder.

(d) "Issue" has the same meaning as in RCW 11.02.005(8).

(e) "Permit holder" means the individual who holds a family cemetery permit issued in accordance with this chapter, and includes an individual to whom a family cemetery permit is transferred in accordance with this chapter.

(f) "Record owner" means the person who owns real property as is shown in the records of the office of the recorder of the county in which all or a portion of the property is situated.

NEW SECTION. **Sec.**  A new section is added to chapter 68.05 RCW to read as follows:

(1) The board must maintain records of the applications, documents, and maps submitted to or obtained by the board pursuant to chapter 68.--- RCW (the new chapter created in section 15 of this act).

(2) The board may charge an individual submitting a map document in accordance with section 4 of this act a fee of not more than twenty-five dollars for each submission of a map document accepted by the board. The board and department may agree the department will set the amount of and accept fees from permit holders due to the board under chapter 68.--- RCW (the new chapter created in section 15 of this act), and, if so, a person must pay such fees directly to the department. Moneys received from fees pursuant to this section must be transmitted to the state treasurer for deposit into the general fund, on a schedule determined by the state treasurer.

**Sec.**  RCW 68.05.090 and 2005 c 365 s 51 are each amended to read as follows:

The board ((~~shall~~)) must enforce and administer the provisions of chapters 68.04 through 68.50 RCW and chapter 68.--- RCW (the new chapter created in section 15 of this act), subject to provisions of RCW 68.05.400. The board may adopt and amend bylaws establishing its organization and method of operation. The board may refer such evidence as may be available concerning violations of chapters 68.04 through 68.50 RCW and chapter 68.--- RCW (the new chapter created in section 15 of this act) to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action the board might commence, bring an action against any person to restrain or prevent the doing of any act or practice prohibited or declared unlawful in chapters 68.04 through 68.50 RCW and chapter 68.--- RCW (the new chapter created in section 15 of this act) and ((~~shall~~)) have standing to seek enforcement of said provisions in the superior court of the state of Washington for the county in which the principal office of the cemetery authority is located, or in the case of an alleged violation of chapter 68.--- RCW (the new chapter created in section 15 of this act), in the superior court of the state of Washington for a county in which the property on which a family cemetery is situated.

**Sec.**  RCW 68.05.400 and 1979 c 21 s 13 are each amended to read as follows:

(1) The provisions of this chapter do not apply to any of the following:

((~~(1)~~)) (a) Nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built; or

((~~(2)~~)) (b) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district.

(2)(a) Only the following sections of this chapter apply to family cemeteries for which a permit is held or should be held pursuant to chapter 68.--- RCW (the new chapter created in section 15 of this act): RCW 68.05.090, 68.05.120, 68.05.173, 68.05.175, 68.05.195, and 68.05.290.

(b) Nothing in this subsection (2) is intended to authorize a holder of a family cemetery permit to act as or exercise any powers of a cemetery authority, other than as provided in chapter 68.--- RCW (the new chapter created in section 15 of this act).

**Sec.**  RCW 68.20.080 and 1943 c 247 s 143 are each amended to read as follows:

Except as provided in section 6 of this act, cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries.

**Sec.**  RCW 68.20.140 and 1987 c 331 s 33 are each amended to read as follows:

(1) This chapter does not apply to:

(a) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district; or

(b) A holder of a family cemetery permit issued in accordance with chapter 68.--- RCW (the new chapter created in section 15 of this act).

(2) Nothing in subsection (1)(b) of this section is intended to authorize a holder of a family cemetery permit to act as or exercise any powers of a cemetery authority, other than as provided in chapter 68.--- RCW (the new chapter created in section 15 of this act).

**Sec.**  RCW 68.40.095 and 1987 c 331 s 40 are each amended to read as follows:

(1) This chapter does not apply to:

(a) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district; or

(b) A holder of a family cemetery permit issued in accordance with chapter 68.--- RCW (the new chapter created in section 15 of this act).

(2) Nothing in subsection (1)(b) of this section is intended to authorize a holder of a family cemetery permit to act as or exercise any powers of a cemetery authority, other than as provided in chapter 68.--- RCW (the new chapter created in section 15 of this act).

**Sec.**  RCW 68.44.180 and 1987 c 331 s 49 are each amended to read as follows:

(1) This chapter does not apply to:

(a) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district; or

(b) A holder of a family cemetery permit issued in accordance with chapter 68.--- RCW (the new chapter created in section 15 of this act).

(2) Nothing in subsection (1)(b) of this section is intended to authorize a holder of a family cemetery permit to act as or exercise any powers of a cemetery authority, other than as provided in chapter 68.--- RCW (the new chapter created in section 15 of this act).

NEW SECTION. **Sec.**  Sections 1 through 7 of this act constitute a new chapter in Title 68 RCW.

**--- END ---**