

SENATE BILL REPORT

ESHB 1037

As of March 14, 2023

Title: An act relating to family burial grounds on privately owned property.

Brief Description: Concerning family burial grounds.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representative Walsh).

Brief History: Passed House: 2/27/23, 95-0.

Committee Activity: Law & Justice: 3/14/23.

Brief Summary of Bill

- Allows a private landowner to establish a family burial ground.
- Establishes requirements for family burial grounds and allows their regulation by city or county ordinance.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kevin Black (786-7747)

Background: Disposition of Human Remains on Private Land. State law defines human remains to mean the body of a deceased person, in any stage of decomposition, as well as the remains following the process of cremation, alkaline hydrolysis, or natural organic reduction.

Disposition of human remains after cremation, alkaline hydrolysis, or natural organic reduction may occur on private lands with the consent of the property owner. Otherwise, it is a misdemeanor to dispose of any human remains in any place except a building dedicated exclusively for religious purposes or a cemetery, which includes a burial park for earth interments, a mausoleum for crypt interments, and a columbarium for permanent niche

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

interments.

State Law Governing Private Cemeteries. Private cemeteries are governed by state law that applies to cemetery authorities, which are defined as entities that have obtained a certificate of authority to operate a cemetery from the Funeral and Cemetery Board, or other entities outside of its jurisdiction. To operate a private cemetery, an individual or legal entity must form a corporation and must obtain a cemetery license. A cemetery authority must survey and subdivide its land into sections, plots, or other subdivisions and make a substantial map or plat of subdivisions with descriptive names and numbers. A written declaration that dedicates the mapped or platted property exclusively to cemetery purposes must be recorded in the county recorder's office.

Property dedicated to cemetery purposes must be held and used exclusively for cemetery purposes, unless the dedication is removed from all or part of the property by an order of the superior court of the county in which the property is situated. In a proceeding to remove the dedication, the cemetery authority must prove to the court that:

- no placements of human remains were made in or that all placements of human remains have been removed from that portion of the property from which dedication is sought to be removed;
- the portion of the property from which dedication is sought to be removed is not being used for placement of human remains; and
- written notice of the proposed removal of dedication has been given to both the Funeral and Cemetery Board and the Department of Archaeology and Historic Preservation (DAHP) and recorded with the county auditor.

Cemetery authorities have other duties, such as establishing and operate an inviolable endowment care fund.

Tax Exemptions for Cemeteries. All lands, buildings, and personal property used exclusively for public burial grounds or cemeteries that do not discriminate based on race, color, national origin, or ancestry are exempt from taxation.

The Washington State Department of Archaeology and Historic Preservation. DAHP is an agency responsible for the study and preservation of the state's archaeological and historical resources. State law requires DAHP to maintain a centralized database and geographic information systems spatial layer of all known cemeteries and known sites of burials of human remains in Washington.

Summary of Bill: A family burial ground may be established on an area of privately-owned land for the burial of human remains, compromising not more than 10 percent of the parcel on which it is established, and observing specified setbacks from critical areas, parcel boundaries, and public right-of-ways. Burials may but are not required to be restricted to a group of persons related to each other by birth, marriage, or adoption. Plots may not be offered for sale or charge and the owner may not charge fees for goods or services provided

in connection with burials. Areas of privately-owned land established as family burial grounds before this act are deemed to be family burial grounds, even if they do not meet these requirements.

Within 30 days of a burial in a family burial ground, the owner of the property must report the burial to DAHP and record the burial with the county auditor, providing each with the deceased person's name, date of birth, date of death, the name of the owner or owners and a legal description of the property including the assessor parcel number, and the latitude and longitude coordinates of the grave, verified by two witnesses or the county coroner, sheriff, or their designee. The existence of the family burial ground must be disclosed to a prospective buyer before the property is sold. Family burial grounds are exempted from laws pertaining to private cemeteries and exempted from the oversight of the Funeral and Cemetery Board. Designation of a family burial ground does not exempt the designated land from the property tax.

Cities and counties may enact ordinances prohibiting the establishment of family burial grounds, or the extension of a family burial ground, and may give power to local planning commissions to make recommendations on this topic.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill restores a great tradition of living in the West by allowing landowners to have family burial grounds. You can't use it to run a commercial business. The tax exemption for cemeteries does not apply. The timeline should be adjusted so DAHP can do its work. The Puyallup Tribe does not have a tradition of cremation but our cemeteries are filled. Some members are burying their relatives on their property as a result and we do not want our elders to risk prosecution. We are an urban reservation and cannot buy property for a cemetery. This supports our advocacy for alternatives to the high prices and predatory practices of the funeral industry. This bill will provide more consumer choice so Washingtonians can make the best decisions for themselves and their loved ones in the worst of circumstances.

CON: This bill provides no protection for human remains and no oversight body for regulation. This causes pain and agony. Leaving local jurisdictions to figure it out doesn't work. Our grassroots coalition has been working for over a year with Rep. Orwall to update cemetery law, including through a task force created by budget proviso in 2022. Please wait so we can work together and create a bill that works for everyone. Cemetery laws are outdated and need improvements. One issue needing resolution is access, so that

descendants can access the site of burials. The bill creates no protection against remains being removed. How will care and maintenance be provided for? What if the property is sold? There are no penalties for failing to record burials with DAHP. The state has no authority over burials on Tribal trust lands. We plan to continue to work on these issues; there is a lot to resolve.

Persons Testifying: PRO: Representative Jim Walsh, Prime Sponsor; Bonnie Bizzell, People's Memorial Association; Sylvia Miller, Vice Chair, Puyallup Tribe of Indians.

CON: Julie Seitz; Allyson Brooks, Department of Archaeology and Historic Preservation.

Persons Signed In To Testify But Not Testifying: No one.