

# HOUSE BILL REPORT

## ESHB 1037

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**As Passed House:**

February 27, 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:**

**Committee Activity:**

Civil Rights & Judiciary: 1/10/23, 1/20/23 [DPS].

**Floor Activity:**

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

**Brief Summary of Engrossed Substitute Bill**

- Permits a natural person to designate an area of land the person owns as a family burial ground, subject to specified requirements and restrictions.
- Includes family burial grounds as a lawful place for disposition of human remains.
- Exempts family burial grounds from certain requirements applicable to private cemeteries.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

Signed by 11 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

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*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.*

**Staff:** Devon Mann (786-7290) and Yelena Baker (786-7301).

**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 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 (Board), or any other entities that operate cemeteries that are not under the jurisdiction of the Board.

*Incorporation and Licensing Requirements.*

In order to operate a private cemetery, an individual or legal entity must form a corporation for the purpose of cemetery operation and obtain a cemetery license from the Board, which administers and enforces state law related to operations of cemeteries.

*Requirements Related to Cemetery Property.*

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 Board and the Department of Archaeology and Historic Preservation and recorded with the

county auditor.

*Endowment Care Fund Requirements.*

A cemetery authority must establish and operate an inviolable endowment care fund. Moneys in the fund must be held in the name of the endowment care fund trustees appointed by the cemetery authority and be separate and distinct from all assets of the cemetery. Before selling any interment rights, a cemetery authority must deposit \$25,000 in its endowment care fund. Additionally, a cemetery authority must deposit into the fund statutorily specified amounts for any plots or interment rights sold and keep records of the ownerships and transfers of all plots or rights of interment in the cemetery.

Moneys in the endowment care fund must be invested in accordance with state law related to management of trust funds by a fiduciary. Income from the fund must be used solely for the general care and maintenance of the cemetery. A cemetery authority must file endowment care fund reports with the Board and make the previous seven years of reports available for review by plot owners at the cemetery authority's principal office.

*Prearrangement Contracts.*

A cemetery authority that sells any merchandise or services by prearrangement contracts must establish and maintain one or more prearrangement trust fund for the benefit of beneficiaries of prearrangement contracts. Statutorily specified amounts must be deposited into the prearrangement trust fund and invested in accordance with state law related to management of trust funds by a fiduciary. A cemetery authority must file with the Board specified financial reports related to the prearrangement trust fund.

If no beneficiary makes a claim within 50 years of the date of a prearrangement contract, a cemetery authority must transfer any funds deposited in the prearrangement trust for that contract into its endowment care fund. However, the cemetery authority remains obligated for merchandise, services, and undeveloped property under the terms of the prearrangement contract, and claims may be made after the funds have been transferred to the endowment fund.

*Rulemaking Authority and Specific Powers of Cemetery Authorities.*

A cemetery authority may make and enforce rules and regulations for purposes it deems necessary for the proper conduct of the cemetery's business. In addition, a cemetery authority may exercise specific powers related to the use, control, and management of the property within the cemetery. For example, a cemetery authority may regulate the uniformity and kind of markers and monuments within the cemetery, as well as prevent improper gatherings in the cemetery.

Local Government Regulation of Private Cemeteries.

In addition to state law, private cemeteries may be subject to regulation by local government.

### Tax Exemptions for Cemeteries.

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

### The Washington State Department of Archaeology and Historic Preservation.

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 the 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 Engrossed Substitute Bill:**

A definition of "family burial ground" is added to state law related to cemeteries, morgues, and human remains. The term means an area of private land designated for the burial of human remains in the ground and in which burials may be, but are not required to be, restricted to a group of persons who are related to each other by birth, marriage, or adoption.

A natural person may designate an area of land the person owns as a family burial ground. If a property is co-owned by two or more persons, written consent of all co-owners is required before a family burial ground may be established on the property.

A family burial ground may not be established on property co-owned by a combination of natural persons and legal entities. Additionally, a family burial ground:

- may not be established within 150 feet of a designated critical area, or within 50 feet of an existing easement or public right-of-way;
- must be set back at least 25 feet from an existing parcel boundary; and
- may not comprise greater than 10 percent of the area of the parcel upon which it is established.

A preexisting family burial ground established prior to the effective date of the bill is deemed a family burial ground in compliance with the bill's requirements, even if the previously established family burial ground or plot does not meet all the applicable requirements. Any new designation of a family burial ground on a property that already contains a family burial ground and any extension of an existing family burial ground must comply with all applicable requirements, regardless of when a family burial ground was established or designated.

The owner of the property on which a family burial ground is located may not offer plots in the family burial ground for sale or charge fees in connection with the burials. Within 30 days of a burial in the family burial ground, the owner must record the burial with the county auditor and provide specified information about the deceased person and the location

of the grave. The owner of the family burial ground must also report each burial to the Washington State Department of Archaeology and Historic Preservation. Before the sale of the property, the owner must inform prospective buyers of the existence of the family burial ground on the property.

Family burial grounds are included as a lawful place for disposition of human remains, along with cemeteries or buildings dedicated exclusively for religious purposes.

Family burial grounds are exempt from the incorporation requirement that applies to private cemeteries. Family burial grounds are also exempt from the cemetery licensing requirement and are not subject to the authority of the Board. The tax exemption for public burial grounds and cemeteries does not apply to family burial grounds.

Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of family burial grounds.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill provides good clarification of existing practices for the requirements applicable to family burial grounds. Protections afforded by the bill to individuals' property rights and rights to privacy are valuable. The bill also gives consumers protection by requiring the disclosure of family burial grounds when property is sold.

(Opposed) None.

(Other) Parcel numbers should be included in the bill because they are a key index for county auditors. Family burial grounds are not necessarily bad, but the bill fails to cover several areas of concern including the impact in critical areas, such as wetlands and roadways, the effect on easements, and the lack of parcel size clarification. Protective amendments would help ease these concerns.

**Persons Testifying:** (In support) Representative Jim Walsh, prime sponsor; and Julie Barrett, Conservative Ladies of Washington.

(Other) Vicky Dalton, Washington State Association of County Auditors; and Paul Jewell, Washington State Association of Counties.

**Persons Signed In To Testify But Not Testifying:** None.