
DIGEST

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HB No. 527

Abstract: Establishes the La. Cemeteries Historic Preservation Program within the Dept. of Culture, Recreation and Tourism, office of cultural development. Creates the La. Historic Cemetery Trust Fund and provides for the use of the proceeds thereof.

Proposed law establishes the La. Cemeteries Historic Preservation Program within the Dept. of Culture, Recreation and Tourism, office of cultural development. Requires all budgeting, purchasing, and management functions to be administered by the department.

Proposed law authorizes the department to employ and remove personnel as may be necessary for the efficient administration of the program in accordance with applicable civil service law, rules, and regulations, and department policies.

Proposed law provides that the department shall have the following powers and duties with respect to the program:

- (1) To implement and enforce the provisions of proposed law.
- (2) To adopt such rules and regulations as are necessary to implement and to enforce the provisions of proposed law. All rules and regulations shall be adopted in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.
- (3) To consult with all interested parties on occasions of planned or inadvertent destruction, damage, or modification of grave spaces within historic cemeteries or of isolated graves and to determine a proper course of action.
- (4) To institute civil proceedings seeking injunctive or other relief to restrain and to prevent violations of proposed law or the laws or administrative rules administered or enforced pursuant to proposed law.
- (5) To institute civil proceedings seeking restitution, payment of costs, or other monetary relief necessary to prevent, restore, or repair damage to grave spaces within historic cemeteries or to isolated graves.
- (6) To issue permits for the disinterment and scientific study of human skeletal remains and artifacts found in or near historic cemeteries or isolated graves. Authorizes the department to adopt rules and regulations to provide for the issuance of emergency

permits by the state archaeologist. Authorizes the use of provisional permits in certain circumstances.

- (7) To charge a permit fee not to exceed \$200 for each such permit. Provides that the monies collected from the issuance of permits, subject to applicable provisions of law shall be used as provided for funds from civil damages in proposed law.

Proposed law authorizes the department to revoke or suspend any permit issued under the provisions of proposed law upon a determination by the division that the holder of the permit has violated the provisions of proposed law or the rules and regulations adopted pursuant to proposed law, or has failed to meet the professional or occupational standards determined by the division, or has failed to ensure that the personnel employed by the holder of the permit meet the professional or occupational standards determined by the division. Requires the department to give notice of any such suspension or revocation.

Proposed law provides that it is unlawful for any person, entity, or group, to whom the board has not issued a permit, to knowingly disturb a historic cemetery or an isolated grave, allow any person, entity, or group access to a historic cemetery or an isolated grave for the purpose of disturbing any such cemetery or grave, or provide funds to or for any person, entity, or group for the purpose of disturbing any historic cemetery or isolated grave.

Proposed law provides that each violation of proposed law shall be punishable upon conviction of a first offense by a fine of not more than \$5,000 or imprisonment for not more than one year, or both. Provides that upon conviction of a second or subsequent offense each violation shall be punishable by imprisonment for not more than two years or a fine of not more than \$10,000, or both. Provides that each disturbance of a historic cemetery or isolated grave constitutes a separate offense.

Proposed law authorizes the department to institute civil proceedings seeking injunctive relief to restrain and prevent violations of proposed law or the laws or administrative rules administered or enforced by the department. Additionally authorizes the department to institute civil proceedings seeking civil damages from any person who knowingly violates any provision of proposed law.

Proposed law authorizes the department to bring actions for injunctive relief or civil damages in either the district court for East Baton Rouge Parish or in the district court where the historic cemetery or isolated grave is located. Provides that the attorney general shall represent the department in all matters pertaining to the administration or enforcement of proposed law, except in those matters in which the board has employed special counsel.

Proposed law provides that civil damages, except for attorney fees, recovered by the department, subject to applicable provisions of law, shall be used by the department to implement and enforce the provisions of proposed law. Provides that civil damages shall also be used to fund activities of the division in regard to restoration and protection of historic cemeteries and isolated graves, in accordance with regulations adopted by the board and other applicable laws. Provides that

attorney fees shall be paid to the La. Dept. of Justice. Provides that the provisions of proposed law shall in no way limit the exercise of concurrent jurisdiction by other state agencies in the prosecution of criminal or civil lawsuits for violations of the provisions of proposed law.

Proposed law provides that any person who has reason to believe he has discovered a historic cemetery or an isolated grave shall notify the department through the division within 72 hours of the discovery. Provides that any activity that may disturb the historic cemetery or isolated grave shall immediately cease on discovery.

Proposed law creates and provides for the La. Historic Cemetery Trust Fund. Provides that the source of the monies to be deposited into the fund shall be grants, gifts, and donations received by the state for the purposes of proposed law, any other revenues, whether local, state, or federal, as may be provided by law, and other monies which may be appropriated by the legislature to the fund.

Proposed law creates an advisory board for the La. Historic Cemetery Trust Fund within the department. Provides that the board shall be comprised of nine members as follows:

- (1) The lieutenant governor, or his designee.
- (2) One member appointed by the La. Cemetery Board.
- (3) Seven members appointed by the lieutenant governor who are persons knowledgeable in the areas of cemeteries, preservation, restoration, architectural education, and La. culture and the arts. Requires that one of the appointed members be a staff member of the division of archaeology.

Proposed law provides that members appointed by the lieutenant governor shall serve four-year staggered terms. Provides that the board shall be domiciled in East Baton Rouge Parish. Requires the advisory board to determine the need for an inventory of historic cemeteries and isolated graves to be regulated by the department and requires the board to maintain the inventory. Further requires the board to adopt such rules, regulations, standards, and grant application procedures necessary to implement the funding provisions of proposed law, in accordance with the provisions of the Administrative Procedure Act and establish priorities and criteria to be considered for grants.

Proposed law requires any cemetery association, cemetery corporation, or nonprofit organization that obtains a grant to advise the director of the division of the progress of the project and verify and provide documentation of any and all expenditures of grant money as deemed necessary and appropriate by the director. Requires the director to monitor, evaluate, and review the development and quality of projects funded through the fund and report findings to the advisory board. Requires the director of the division to call a meeting of the advisory board at any time if there is a need for consideration and awarding of an immediate grant.

Proposed law requires that monies in the fund be awarded as determined by the advisory board

for the sole purpose of the preservation, protection, and repair of historic cemeteries, tombs, and grave plots in the state. Provides that no grant shall be authorized to be made to replace funds that would be available through an applicable perpetual care fund.

Proposed law provides that the provisions of proposed law shall not apply to the following:

- (1) A cemetery operated under the authority and regulation of the board.
- (2) An unmarked burial site that is covered under the authority and regulation of the division or present law (Chapter 10-A of Title 8 of the L.R.S. of 1950).
- (3) Normal cleaning of grave spaces and grounds maintenance.
- (4) Grave spaces within abandoned cemeteries that are less than 50 years old.

Proposed law provides that the advisory board to the La. Historic Cemetery Trust Fund shall be placed within the Dept. of Culture, Recreation and Tourism as provided for agencies transferred in accordance with R.S. 36:802.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 25:931-943 and R.S. 36:209(Q))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Municipal, Parochial and Cultural Affairs to the original bill.

1. Added to proposed law the definition of "abandoned cemetery".
2. Amended the definition of "historic cemetery" to include only abandoned cemeteries.
3. Removed provisions of proposed law that require that the program be staffed with no less than one and no more than two employees whose salary shall be funded out of the La. Historic Cemetery Trust Fund. Additionally removes provisions that provide that the salaries of department employees may be paid out of the state general fund until sufficient monies are available in the trust fund. Further removes provisions that provide for the disbursement of trust fund monies to pay staff salaries.
4. Added statement that the department shall not be required to charge a fee for any permit issued pursuant to proposed law.
5. Removed provisions of proposed law that provide that the director of the La. Cemetery Board shall serve as a member of the La. Historic Cemetery Trust Fund advisory board. Instead provides that the La. Cemetery Board shall appoint a member

to the advisory board.

6. Added requirement that the lieutenant governor appoint, as one of his seven appointments to the La. Historic Cemetery Trust Fund advisory board, a staff member from the division of archaeology.
7. Added requirement that the La. Historic Cemetery Trust Fund advisory board determine the need for an inventory of historic cemeteries and isolated graves to be regulated by the department and maintain the inventory.