

Regular Session, 2012

SENATE BILL NO. 187

BY SENATOR DORSEY-COLOMB

CEMETERIES. Provides relative to the collection, analysis and reburial of exposed human skeletal remains from municipal and abandoned cemeteries. (8/1/12)

AN ACT

To enact R.S. 8:663, relative to human remains; to provide for the collection, analysis, and reburial of exposed human skeletal remains; to provide certain terms, conditions, definitions, procedures and requirements; to provide for certain limitation of liability; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 8:663 is hereby enacted to read as follows:

§663. Collection, analysis, and reburial of exposed human skeletal remains

A. The legislature hereby finds that exposed human skeletal remains in cemeteries, while harmless from a public health perspective, are nonetheless disrespectful to those interred in the cemetery and are susceptible to being looted. Accordingly, the legislature finds that the collection and reburial of these remains, in a controlled, scientific, and respectful manner, is in the best interests of the public.

B. This Section shall apply only to municipal cemeteries as defined in R.S. 8:1, and to cemeteries that do not currently hold a certificate of authority under this Title.

1 C. The words and phrases in this Section shall have the meanings given
2 to them in Chapter 10-A of this Title unless the context clearly indicates
3 otherwise.

4 D. (1) Upon the identification of human skeletal remains and burial items
5 exposed to the surface in a cemetery subject to this Section, the Louisiana
6 Cemetery Board or the attorney general shall make a reasonable attempt to
7 contact the cemetery and demand that such human skeletal remains and burial
8 items be secured and re-interred.

9 (2) Upon a failure or refusal of the cemetery authority to comply with a
10 demand made under Subpart(D)(1) of this Section and with the express written
11 permission of the cemetery authority, the attorney general or students and
12 instructors of institutions of higher education from the disciplines of
13 anthropology, archaeology, biology, and mortuary science may undertake the
14 systematic collection of human skeletal remains and burial items that are
15 exposed to the surface and are at risk of being looted from cemeteries within the
16 state.

17 (3) If written permission of the relevant cemetery authority cannot be
18 reasonably obtained and the exposed human skeletal remains are at risk of
19 being looted, the attorney general may apply to the district court in which the
20 cemetery is located for an order to safeguard the human skeletal remains. Upon
21 the filing of such a petition, the district court shall set the matter for hearing in
22 the manner provided in C.C.P. Art. 3601, et seq.

23 (4) The attorney general may collect the exposed human skeletal remains
24 or may delegate that authority to a qualified party under this Subsection.

25 E. The following procedures and protocols shall be followed in
26 undertaking any collection program under this Section:

27 (1) Prior to any collection activity notification, proof of compliance with
28 this Section shall be provided to the Louisiana Cemetery Board, the Louisiana
29 Division of Archaeology, and the attorney general, in writing.

1 (2) Any collection activities shall be conducted under the direction of the
2 attorney general or a full-time faculty member from an accredited college or
3 university in the state of Louisiana.

4 (3) Any collection activities undertaken pursuant to this Section shall be
5 supervised by a person with a minimum education level of a master's degree in
6 one of the enumerated fields of study in Subpart(D)(2) of this Section.

7 (4) All human skeletal remains and burial items collected from the
8 surface of a cemetery pursuant to this Section shall be collected in the following
9 manner:

10 (a) A minimum of two digital photographs of the collected item shall be
11 taken prior to its collection that will allow for a visual demonstration of its
12 original location.

13 (b) A handheld global positioning system (GPS) device shall be used to
14 document, with as much specificity as the technology permits, the geographic
15 location of the item prior to its collection.

16 (c) Each item collected shall be separately bagged.

17 (d) Each collection bag shall be labeled and shall contain a label noting,
18 at a minimum, the date of collection, the name of the cemetery, the GPS
19 coordinates of the item, and the name of the collector.

20 (5) The following identification procedures shall be undertaken following
21 collection of any human skeletal remains or burial items pursuant to this
22 Section:

23 (a) There shall be affixed to the item a label sufficient to correlate the
24 item to the documentation collected in Subpart(E)(3) of this Section.

25 (b) To the extent possible, all standard metric and non-metric
26 measurements and observations of the human skeletal remains shall be
27 documented pursuant to the Standards for Data Collection from Human
28 Skeletal Remains or other comparable subsequent set of data collection
29 standards.

1 (c) All human skeletal remains collected pursuant to this Section shall be
2 stored in a secure location at the collecting institution until such time as the
3 cemetery authority undertakes reburials pursuant to this Section.

4 (d) Copies of any and all documents and photographs generated from the
5 collection activities permitted by this Section shall be lodged with the cemetery
6 authority and the office of the attorney general at the time of re-interment of the
7 human skeletal remains and burial items. These documents and photographs
8 shall constitute public records, subject to the limitations set forth in R.S.
9 41:1609 and R.S. 44:4(44).

10 F. The following protocols shall be the responsibility of the cemetery
11 authority:

12 (1) The cemetery authority shall re-inter, at its own cost, the human
13 skeletal remains and burial items collected pursuant to this Section.

14 (2) If analysis leads to the positive identification of any human skeletal
15 remains, such remains shall be re-interred by the cemetery authority, at its own
16 cost, in the grave space associated with the identified individual.

17 (3) In the event that no cemetery authority is identifiable, such human
18 skeletal remains shall be curated by the collecting entity in a manner that
19 conforms to the Louisiana Division of Archaeology curation guidelines. Such
20 human skeletal remains may be re-interred in an unused portion of the subject
21 cemetery pursuant to an order of a court of competent jurisdiction.

22 G. There shall be no liability on the part of, and no action for damages
23 against, any of the following:

24 (1) Any institution, or its agents, employees, or students, for any action
25 undertaken or performed by such person pursuant to this Section when such
26 person is acting without malice and in the reasonable belief that the action
27 taken by him is warranted.

28 (2) Any cemetery owner, cemetery authority, or its agents or employees,
29 for any action undertaken or performed by such person pursuant to this Section

1 when such person is acting without malice and in the reasonable belief that the
 2 action taken by him is warranted.

3 (3) Any person, committee, association, organization, firm, or
 4 corporation providing information to an institution, cemetery owner, or
 5 cemetery authority conducting or permitting collection activities pursuant to
 6 this Section, its agents, employees, or students when such a person, committee,
 7 association, organization, firm, or corporation providing such information
 8 without malice and in the reasonable belief that such information is accurate
 9 shall not be held, by reason of having provided such information, to be liable in
 10 damages under any law of the state or any political subdivision thereof.

11 (4) The Louisiana Cemetery Board, the Louisiana Division of
 12 Archaeology, and the attorney general, and their agents or employees, shall not
 13 be liable in damages under any law of the state or any political subdivision for
 14 their role in administering portions of this Section.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Alan Miller.

DIGEST

Dorsey-Colomb (SB 187)

Proposed law provides that the legislature finds that the collection and reburial of exposed human skeletal remains in cemeteries done in a controlled, scientific, and respectful manner, is in the best interests of the public.

Proposed law applies only to municipal cemeteries and to cemeteries that do not currently hold a certificate of authority under present law.

Proposed law provides that upon the identification of human skeletal remains and burial items exposed to the surface in a cemetery subject to proposed law, the Louisiana Cemetery Board or the attorney general shall make a reasonable attempt to contact the cemetery and demand that such human skeletal remains and burial items be secured and re-interred.

Proposed law provides that upon a failure or refusal of the cemetery authority to comply with a demand made under proposed law, and with the express written permission of the cemetery authority, the attorney general or students and instructors of institutions of higher education from the disciplines of anthropology, archaeology, biology, and mortuary science may undertake the systematic collection of human skeletal remains and burial items exposed to the surface and at risk of being looted from cemeteries within the state.

Proposed law provides that if written permission of the relevant cemetery authority cannot be reasonably obtained and the exposed human skeletal remains are at risk of being looted, the attorney general may apply to the district court in which the cemetery is located for an order to safeguard the human skeletal remains. Upon the filing of such a petition, the district

court shall set the matter for hearing in the manner provided in present law.

Proposed law provides that the attorney general may collect the exposed human skeletal remains or may delegate that authority to a qualified party according to proposed law.

Proposed law sets forth procedures and protocols to be followed in undertaking any collection program.

Proposed law sets forth protocols that are the responsibility of the cemetery authority.

Proposed law shields from liability all of the following parties:

- (1) Any institution, or its agents, employees, or students, for any action undertaken or performed by such person pursuant to proposed law, when such person is acting without malice and in the reasonable belief that the action taken by him is warranted.
- (2) Any cemetery owner, cemetery authority, or its agents or employees, for any action undertaken or performed by such person pursuant to proposed law, when such person is acting without malice and in the reasonable belief that the action taken by him is warranted.
- (3) Any person, committee, association, organization, firm, or corporation providing information to an institution, cemetery owner, or cemetery authority conducting or permitting collection activities pursuant to proposed law, its agents, employees, or students when such a person, committee, association, organization, firm, or corporation providing such information without malice and in the reasonable belief that such information is accurate shall not be held, by reason of having provided such information, to be liable in damages under any law of the state or any political subdivision thereof.

Proposed law shields the Louisiana Cemetery Board, the Louisiana Division of Archaeology, and the attorney general, and their agents or employees, from any liability for damages under any law of the state or any political subdivision for their role in administering portions of proposed law.

Effective August 1, 2012.

(Adds R.S. 8:663)