

1 SB71
2 115299-1
3 By Senator Mitchell
4 RFD: Governmental Affairs
5 First Read: 12-JAN-10
6 PFD: 01/04/2010

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8 SYNOPSIS: Under existing law, the desecration or
9 defacement of certain memorials of a deceased
10 person is a crime.

11 This bill would provide further for the type
12 of memorial by including a burial mound or certain
13 other burial structures and would provide an
14 exemption for certain cemetery operators and others
15 authorized to remove a memorial.

16 Amendment 621 of the Constitution of Alabama
17 of 1901, now appearing as Section 111.05 of the
18 Official Recompilation of the Constitution of
19 Alabama of 1901, as amended, prohibits a general
20 law whose purpose or effect would be to require a
21 new or increased expenditure of local funds from
22 becoming effective with regard to a local
23 governmental entity without enactment by a 2/3 vote
24 unless: it comes within one of a number of
25 specified exceptions; it is approved by the
26 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to
2 the entity for the purpose.

3 The purpose or effect of this bill would be
4 to require a new or increased expenditure of local
5 funds within the meaning of the amendment. However,
6 the bill does not require approval of a local
7 governmental entity or enactment by a 2/3 vote to
8 become effective because it comes within one of the
9 specified exceptions contained in the amendment.

10
11 A BILL
12 TO BE ENTITLED
13 AN ACT
14

15 To amend Section 13A-7-23.1, Code of Alabama 1975,
16 relating to the crime of desecration or defacement of certain
17 memorials and to provide exemptions; and in connection
18 therewith would have as its purpose or effect the requirement
19 of a new or increased expenditure of local funds within the
20 meaning of Amendment 621 of the Constitution of Alabama of
21 1901, now appearing as Section 111.05 of the Official
22 Recompilation of the Constitution of Alabama of 1901, as
23 amended.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Section 13A-7-23.1, Code of Alabama 1975,
26 is amended to read as follows:

27 "§13A-7-23.1.

1 "(a) Any person who willfully or maliciously
2 injures, defaces, removes, or destroys any tomb, monument,
3 gravestone ~~or other memorial of the dead, or any fence or any~~
4 ~~inclosure about any tomb, monument, gravestone or memorial,~~
5 burial mound, earthen or shell monument containing human
6 skeletal remains or associated burial artifacts, or other
7 structure or thing placed or designed for a memorial of the
8 dead, or any fence, railing, curb, or any enclosure for the
9 protection or ornamentation of any tomb, monument, gravestone,
10 burial mound, earthen or shell monument containing human
11 skeletal remains or associated burial artifacts, or other
12 structure before mentioned, or for any enclosure for the
13 burial of the dead, or any person who willfully and wrongfully
14 or maliciously destroys, removes, cuts, breaks, or injures any
15 tree, shrub, plant, flower, decoration, or other real or
16 personal property within any cemetery or graveyard shall be
17 guilty of a Class A misdemeanor.

18 "(b) Any person who willfully or maliciously
19 desecrates, injures, defaces, removes, or destroys any tomb,
20 monument, structure, or container of human remains, burial
21 mound, earthen or shell monument containing human skeletal
22 remains or associated burial artifacts, and invades or
23 mutilates the human corpse or remains shall be guilty of a
24 Class C felony and upon conviction the person shall be
25 punished as provided by law. ~~Any person who maliciously~~
26 ~~desecrates an American Indian place of burial or funerary~~
27 ~~objects on property not owned by the person shall be guilty of~~

1 ~~a Class C felony and upon conviction the person shall be~~
2 ~~punished as provided by law.~~

3 "(c) The provisions of subsections (a) and (b) ~~of~~
4 ~~this section~~ shall not apply to any person holding a permit
5 issued by the Alabama Historical Commission pursuant to
6 subsection (d) of this section, to anyone operating a cemetery
7 under standard rules and regulations and maintenance
8 procedures, or to any person otherwise authorized by law to
9 remove or disturb a tomb, monument, grave marker, burial
10 mound, earthen or shell monument, or similar structure, or its
11 contents, as described in subsections (a) and (b).

12 "(d) The Alabama Historical Commission, to provide
13 for the lawful preservation, investigation, restoration, or
14 relocation of human burial remains, human skeletal remains, or
15 funerary objects, shall promulgate rules and regulations for
16 the issuance of a permit and may issue a permit to persons or
17 companies who seek to restore, preserve, or relocate human
18 burial remains, human skeletal remains, funerary objects, or
19 otherwise disturb, a place of burial."

20 Section 2. Although this bill would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds, the bill is excluded from further
23 requirements and application under Amendment 621, now
24 appearing as Section 111.05 of the Official Recompilation of
25 the Constitution of Alabama of 1901, as amended, because the
26 bill defines a new crime or amends the definition of an
27 existing crime.

1 Section 3. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.