

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 15, 1998 Revised: _____

Subject: Funeral and Cemetery Services

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>WM</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

Committee Substitute for Senate Bill 1572 is entitled the "Cemetery Preservation and Consumer Protection Act" and substantially amends chapter 497, Florida Statutes (funeral and cemetery services law). The bill defines care and maintenance as it relates to cemeteries, mausoleums, columbaria (repositories for cremated remains), graves and other cemetery property and authorizes the Board of Funeral and Cemetery Services (Board) within the Department of Banking and Finance to promulgate rules establishing minimum standards for care and maintenance of buildings and grounds at licensed cemeteries. The provisions of the bill do not affect religiously affiliated cemeteries or funeral directors.

The bill mandates public notice provisions for the sale of cemetery lands, establishes standards for the construction of new or renovated mausoleums and columbaria, and authorizes the Board to adopt rules assuring that all crypts and niches are securely and permanently sealed. Criminal penalties are increased for cemetery vandalism and civil enforcement is upgraded by adding the Attorney General as a potential plaintiff for court actions. Greater flexibility is given to counties in carrying out their duties to bury or cremate unclaimed bodies. The bill further creates a task force to study the problems of abandoned and neglected cemeteries in Florida and to make recommendations to the Legislature next year.

The bill does have a fiscal impact.

The bill substantially amends the following sections of the Florida Statutes: 245.07, 497.005, 497.229, 497.253, 497.257, 497.417, 497.527, and 872.02. The bill creates the following sections of the Florida Statutes: 497.0255 and 497.255.

II. Present Situation:

Due to the aging of Florida's population and the influx of retirees to the state, the cemetery industry has become one of the fastest growing segments of the economy, with almost \$200 million in gross sales last year. Chapter 497, F. S., outlines the regulatory and operational framework for licensed cemeteries in Florida including regulation of sales practices by licensees, and assures the financial stability and safety of both cemetery companies and trust funds for the perpetual care and maintenance of cemeteries. The few references in the existing statute to care and maintenance and other physical operations at cemeteries are very general in nature. There are no specific requirements concerning what must be done by a cemetery company in order for the care and maintenance to be proper and adequate.

Pursuant to s. 497.229, F.S., cemeteries are required to have a minimum of 15 acres to be licensed and if they have more than 15 acres within their boundaries and wish to sell or otherwise convey some of the surplus land for non-cemetery purposes, they may do so with the approval of the Department of Banking and Finance. However, there are no standards for the department to apply in deciding whether to approve the request. The present law requires that, if there have previously been human remains interred in the land to be sold, those human remains must first be removed, and the cemetery company must acquire all outstanding burial rights and other property interests in the land. There is no present requirement that the public be informed that cemetery land is proposed to be sold and converted to non-cemetery uses, nor any requirement that the purchaser be informed that the land was previously used for burials.

Mausoleums and columbaria are meant to be, and marketed as durable and permanent structures to serve as the final resting place for the deceased. However, there are no standards for materials, construction, or durability of such structures to assure that the intended permanence is achieved. Most local governments in Florida use the standard Building Code as a minimum building standard. However, the code has no specific requirements for mausoleums or columbaria, and places them in the general category of "storage buildings." Thus, there would be no prohibition against a cemetery company erecting a metal warehouse, or a 2x4 wood frame structure with vinyl siding, calling it a mausoleum and selling crypt spaces therein to the public.

Purchasers of burial rights in a proposed mausoleum under construction are protected by the provisions of s. 497.257, F.S., which require that a proportionate share of the cost of completion of the construction be placed in a preconstruction trust fund. If the construction is halted, the trustee may use the trust funds to complete the building. However, there is no similar provision protecting purchasers of burial rights in a proposed columbarium.

Another problem according to proponents of the bill is the abandoned and neglected cemeteries located throughout Florida. Currently, there is no provision in the law for the care and maintenance of these cemeteries.

III. Effect of Proposed Changes:

Section 1. The bill is cited as the “Cemetery Preservation and Consumer Protection Act.”

Section 2. Amends s. 497.005, F.S., to reorganize the order of defined terms and to establish a comprehensive definition of “care and maintenance” as that term relates to a cemetery and its lots, graves, grounds, crypts, mausoleums, columbaria, etc. The term includes mowing the grass, suppression of weeds, upkeep, repair, machinery, overhead expenses, restoration and destruction of cemeteries.

Section 3. Creates s. 497.0255, F.S., to require every licensed cemetery to ensure that cemeteries are well cared for and maintained. It mandates that the Board of Funeral and Cemetery Services (Board) promulgate rules by July 1, 1999, to implement and enforce this section. In promulgating such rules, the Board may define different classes of licensed cemeteries, if the designation of classes is in the public interest and supported by findings of the board.

Section 4. Amends s. 497.229, F.S., to state that any cemetery which violates the provisions of this chapter or rules of the Board shall be deemed a public nuisance under s. 60.05, F.S. (Injunction law). As such, the Attorney General or any state attorney, county, city or citizen may sue to enjoin the nuisance.

Section 5. Amends s. 497.253, F.S., to provide that if a licensed cemetery wishes to sell lands within the cemetery, it must give public notice and possibly undergo a public hearing to seek approval for the sale, if the land in question has ever been used for interment of human remains. The human remains must be relocated, with permission of an authorized person, before approval of the sale. If the land in question has never been used for interments, then no public notice or hearing will be required before the Department of Banking and Finance (Department) approves or denies the sale. The CS provides criteria to be considered by the Department prior to approving the sale.

Section 6. Creates s. 497.255, F.S., to require the Board to establish rules by July 1, 1999, as to the minimum standards for the construction and significant renovation of mausoleums and columbaria to assure their durability and permanence. The rules would then be submitted to the Florida Board of Building Codes and Standards to be considered for inclusion in the Statewide Minimum Building Code pursuant to s. 553.73, F.S. In promulgating such rules, the Board may define different classes of structures or construction standards, if the designation of classes is in the public interest and supported by findings of the board. Also, the term “significant alteration or renovation” means such renovation or repair which results in the creation of a new crypt or niche. The bill authorizes that mausoleums and columbaria do not have to provide sprinkler systems if constructed of noncombustible materials.

Section 7. Amends s. 497.257, F.S., to insert the term columbaria into the cemetery construction deadline provisions. Columbaria is defined as a structure or building exposed above ground for cremated remains.

Section 8. Amends s. 497.417, F.S., to remove the investment authority of trustees who possess the fiduciary authority for preneed trusts to invest in life insurance policies and annuity contracts. According to proponents of the bill, there have been instances where trustees have invested trust funds in these policies which has resulted in significant financial problems.

Section 9. Amends s. 497.527, F.S., to add the Attorney General to the provision which allows any person to bring a civil action against a person or company violating the provisions of this chapter. It deletes the minimum civil damages' amount (\$500) which may be assessed against a person or company that violates a provision of this chapter.

Section 10. Amends s. 872.02, F.S., to increase the penalty for injuring a tomb or monument from a first degree misdemeanor to a third degree felony. The CS designates that the word "tomb" includes any mausoleum, columbarium or below ground crypt.

Section 11. Amends s. 245.07, F.S., to provide that persons licensed under chapters 470 and 497 will not be liable for any damages resulting from burying bodies.

Section 12. Creates an 11-member Task Force on Abandoned and Neglected Cemeteries to be appointed by the Comptroller to study the problem of abandoned and neglected cemeteries in the state and make recommendations in a report to the Legislature by January 15, 1999.

Section 13. Authorizes an unspecified appropriation to the department from the department's Regulatory Trust Fund to carry out the purposes of the act.

Section 14. Provides an effective date of July 1, 1998, however, certain provisions of the act will not be enforceable until the Board promulgates specified rules.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Licensed cemetery companies are required to expend funds to meet the standards imposed under the bill for the care and maintenance of cemeteries, graves, mausoleums and other cemetery property as well as building or renovating new structures. Additionally, there are costs for civil actions and the publishing of public notices when cemetery land is sold.

C. Government Sector Impact:

Due to the increased costs associated with the regulation provisions of the bill, the Department of Banking and Finance estimates the fiscal impact to be \$131,042 for FY 98-99 and for each of the following 2 fiscal years. One FTE is required as are 2 OPS positions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.