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DATE: May 17, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-195, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
FINAL ANALYSIS**

BILL #: SB 156
RELATING TO: Funeral and Cemetery Services
SPONSOR(S): Senator Klein
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BANKING & INSURANCE YEAS 8 NAYS 0
 - (2) FISCAL POLICY W/D
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

SB 156 revises Chapter 497, F.S., which addresses the Department of Banking and Finance's (DBF) regulatory authority over the cemetery and funeral service industry. The bill provides the following revisions:

- creates a definition for "religious institution" which refers to the organization instead of the facility, in reference to church-affiliated cemeteries and other interment facilities, and establishes an affiliation between the religious institution and the facility through the term ownership;
- clarifies that the existing Regulatory Trust Fund is placed under the Department of Banking and Finance;
- consolidates examination, application, and renewal fees for cemetery and funeral service providers to conform the DBF's regulatory provisions for licensees with the department's regulatory provisions for other financial services industries; and
- provides for electronic filing of documents and fees.

There is no fiscal impact to the state and the act will take effect on July 1, 2000.

Please see Section VI for a history of this bill and the House Companion Bill, **HB 629 by Financial Services and Representative Crow.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 497, Florida Statutes, provides for the regulation of funeral and cemetery services by the Department of Banking and Finance (DBF) and the Board of Funeral and Cemetery Services (board) created within the DBF for that purpose. Both the DBF and the board are authorized to adopt rules to implement the regulatory provisions. The regulation is designed to protect purchasers of burial rights and preneed funeral or burial merchandise or funeral or burial services. This chapter also establishes a methodology by which specified cemeteries must set aside a portion of the cost of their services in a trust to provide for perpetual care and maintenance of grave sites.

Section 497.003, F.S., provides eight specific exemptions from the provisions of the chapter for certain church, civic, local government, and family cemeteries. However, all cemeteries are subject to provisions in Chapter 497, F.S., relating to burial record keeping, solicitation practices, illegal tying arrangements, discrimination, and abandoned cemeteries. Additionally, exempted cemeteries of more than five acres are required to submit to investigation and mediation procedures by the DBF in the event of a consumer complaint.

Throughout Chapter 497, F.S., references are made to church cemeteries and in some cases to interment facilities associated with synagogues. The chapter does not provide a definition for the term "church" and there is not a consistent reference to synagogues or any mention of other religious institutions in relation to cemetery affiliation. Additionally, the references do not specifically address the relationship of the religious institution to the cemetery.

Section 497.201, F.S., requires all persons operating cemeteries to be licensed unless specifically exempted. The cemetery company must pay an initial investigation fee of \$5,000 and an annual license fee based on the cemetery's annual gross sales as established in s. 497.213, F.S. The fees are graduated from \$250 for \$0 to \$25,000 in gross sales to \$2,650 for at least \$1 million in gross sales. (See Chart A on attachment.)

Section 497.405, F.S., further requires all persons who may sell a preneed contract for services, merchandise or burial rights, to apply to the board for a valid certificate of authority. This section includes those exempt under s. 497.003, F.S., but makes very specific exemptions for trust institutions receiving funds in trust for the sale of a preneed contract, certain qualified Florida corporations, and certain churches offering specific

preneed services that are located in counties with less than 960,000 in population on July 1, 1996. The initial application and annual renewal fees for certificates of authority are set by the board at an amount not to exceed \$500 per certificate holder in s. 497.407, F.S. Branch registrants are allowed to pay a fee established by the board of not more than \$100. This section also requires each certificate holder to pay a one-time fee at an amount set by the board, not to exceed \$5, for each preneed contract entered into no later than 60 days after the end of each quarter. Fees are paid to the DBF and deposited into the Regulatory Trust Fund.¹

Additionally, s. 497.103(4), F.S., authorizes the DBF to examine the financial affairs of any cemetery company and any preneed sales certificate holder and charge examination fees prescribed by departmental rule as authorized in s. 497.431, F.S. The fees are limited to \$300 per 8-hour day for each examiner plus per diem expenses if out-of-state travel is required. The department is also entitled to recover reasonable and justifiable costs if the investigation results in judicial or administrative disciplinary action.

Section 497.131, F.S., provides for the handling of disciplinary actions related to complaints against cemetery and funeral service providers. The DBF is charged to investigate any written complaint filed with the DBF. The DBF and the board are authorized to take final action on a complaint. When a complaint is deemed to be legally sufficient,² the DBF is to submit its investigative report to the probable cause panel of the board. This section provides for the prosecution of such complaints by the DBF or the board in certain circumstances under the provisions of Chapter 120, F.S. The DBF is also to refer any investigation or disciplinary proceeding not before the Division of Administrative Hearings under Chapter 120, F.S., within 1 year of the filing of a complaint. In such cases, the panel is authorized to retain independent council and investigators to continue the investigation and the associated costs are to be paid from the Regulatory Trust Fund.

Section 497.117, F.S., directs the Department of Legal Affairs to provide legal and investigative services to the DBF's Board of Funeral and Cemetery Services. This section also authorizes the board to retain independent legal counsel to provide legal advice to the board on a specific matter if such action is approved by the Attorney General. The fees and costs of retaining such counsel is to be paid from the Regulatory Trust Fund.

The cemetery industry has become a fast-growing segment of the economy, with over \$200 million gross sales by cemetery licensees last year. The regulation of cemetery and funeral services under Chapter 497, F.S., has been continually amended to address the rise of new situations resulting from this rapid growth in the industry. The DBF and the Board of Funeral and Cemetery Services is currently comprehensively reviewing the provisions of the chapter to determine if statutory changes need to be made to streamline the regulatory process and promote competition in the industry while maintaining adequate protection for consumers.

¹Section 215.31, F.S., requires all agency revenues be deposited into the Treasury and accounted for by trust fund by the DBF. Section 215.321, F.S., establishes the Regulatory Trust Fund as the depository for funds received under a variety of regulatory statutes administered by the DBF, including chapter 497, F.S. NOTE: this section does not place the trust fund within any particular subsection of the DBF.

²Section 497.131, F.S., specifies that a complaint is legally sufficient if the investigation reveals ultimate facts showing a violation of Chapter 497, F.S., related DBF rule, or board rule.

C. EFFECT OF PROPOSED CHANGES:

The reference to church affiliated cemeteries and other interment facilities is revised in Chapter 497, F.S., by creating a definition for "religious institution" which refers to the organization instead of the facility. This term is then substituted for the word "church" throughout the chapter. Additionally, the affiliation between the religious institution and the interment facility is established by the term ownership. This definition allows for a more accurate description of the licensee without prescribing its nature.

Numerous provisions in Chapter 497, F.S., authorize the DBF's imposition and collection of a variety of regulatory fees from licensees. The statutes direct the DBF to deposit these fees into the Regulatory Trust Fund, which is referenced in a variety of ways within Chapter 497, F.S. The bill addresses this by revising the description of the Regulatory Trust Fund throughout the chapter to reflect the trust fund's placement under the Department of Banking and Finance.

The bill consolidates examination, application, and renewal fees for cemetery and funeral service providers regulated under Chapter 497, F.S., to conform the Department of Banking and Finance's regulatory provisions for these licensees with the DBF's regulatory provisions for other financial services industries. In some instances, this consolidation has resulted in an increase in the application and renewal fees, but provides relief through elimination of the additional examination fees.

Specifically, the annual license fees for cemetery companies with annual gross sales of at least \$750,000 but less than \$1 million are raised from \$1,750 to \$2,250. Those with gross sales of at least \$1 million but less than \$5 million are raised from \$2,650 to \$3,250, and a new category is created to provide that companies with more than \$5 million in gross sales will be assessed a fee of \$4,900.

Currently, the fee to sellers of preneed cemetery or funeral services for the original certificate of authority and its annual renewal is set by the board and cannot exceed \$500. The bill sets the initial application at \$500 and provides a graduated annual renewal fee based on the number of preneed contract sales of the applicant during the immediately preceding year. The fees range from \$300 for renewal with no preneed sales to \$18,500 for contract sales of at least \$30,000. (See Chart B on attachment) This fee structure has been recommended by the DBF as an equitable approach to assessing regulatory fees in relation to the level of departmental regulatory activity required per applicant due to the level of business activity of the applicant. The department further asserts that this fee schedule was developed to closely track the current level of examination fee assessments collected from the tiers of cemetery and funeral preneed service sellers reflected in the chart.

The bill also raises fees for branch registrants from \$100 to \$150, and the one-time fee assessed per preneed contract is raised from a maximum of \$5 to a maximum of \$10. The department asserts that although these fees are being raised, cemetery and funeral service providers should experience little if any actual increase in costs due to the elimination of the fees assessed for the mandatory triennial examination of cemetery company financial affairs and preneed certificate holders.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 497.003, F.S., to revise the reference to church affiliated cemeteries and interment facilities by substituting the words "religious institution." This section establishes that the relationship between the religious institution facility and the interment facility is one of ownership.

Section 2 amends s. 497.005, F.S., to provide a definition for religious institution.

Section 3 amends s. 497.103, F.S., to authorize the department to adopt rules to facilitate the electronic submission of documents and to eliminate the department's authority to charge examination fees.

Section 4 amends s. 497.117, F.S., to revise the description of the Regulatory Trust Fund to reflect the trust fund's placement under the Department of Banking and Finance.

Section 5 amends s. 497.131, F.S., to revise the description of the Regulatory Trust Fund to reflect the trust fund's placement under the Department of Banking and Finance.

Section 6 amends s. 497.213, F.S., to raise the annual license fees for those cemetery companies with at least \$750,000 in annual gross sales.

Section 7 amends s. 497.245, F.S., to eliminate the department's authority to charge examination fees.

Section 8 amends s. 497.341, F.S., to revise the reference to church affiliated cemeteries by substituting the words "religious institution."

Section 9 amends s. 497.405, F.S., to revise the reference to church affiliated cemeteries by substituting the words "religious institution."

Section 10 amends s. 497.407, F.S., to set the initial application fee for a certificate of authority, and establish a tiered assessment of annual renewal fees for certificate holders based on the number of annual preneed contract sales. This section also increases the certificate of authority fee assessed for operating as a branch registrant, and the one-time fee assessed for each preneed contract. Finally, this section revises the description of the Regulatory Trust Fund to reflect the trust fund's placement under the Department of Banking and Finance.

Section 11 amends s. 497.431, F.S., to eliminate the department's authority to charge examination fees except for out-of-state per diem travel expenses.

Section 12 amends s. 497.435, F.S., to revise the description of the Regulatory Trust Fund to reflect the trust fund's placement under the Department of Banking and Finance.

Section 13 amends s. 497.439, F.S., to provide for the submission of preneed sales agent registrations and fees by electronic means.

Section 14 provides that this act will be effective on July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those providers of cemetery and funeral services that are currently assessed regulatory fees by the DBF may experience higher annual license and renewal and certificate of authority fees, but these will be offset by the elimination of examination fees. In addition to realizing an overall reduction in regulatory costs, cemetery and funeral service providers will be able to factor the set fees provided in this bill into their annual budgets instead of having to attempt to estimate the examination fees arbitrarily incurred within the 3-year examination cycle. The reduction in industry costs should enable the industry to remain competitive.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

STORAGE NAME: s0156z.fs

DATE: May 17, 2000

PAGE 7

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

By setting in statute those fees which are currently established by rule, this bill has the effect of reducing the department's rule-making authority regarding fees. The bill authorizes the department or board to adopt rules to allow for the electronic submission of any applications, documents, or fees required by Chapter 497, F.S., and for the acceptance of certification of compliance in lieu of requiring submission of documents.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Disposition of the House Bill:

HB 629 was heard in the Financial Services Committee on December 7, 1999, as Proposed Committee Bill 00-01 and passed by a vote of 8 YEAS to 0 NAYS. The bill was prefiled as HB 629 by Financial Services and Representative Crow on December 10, 1999, and referred on January 14, 2000, to the Committees on Governmental Rules & Regulations, Finance & Taxation, and General Government Appropriations. At its February 8, 2000, meeting, the Governmental Rules & Regulations Committee adopted an amendment that changed the term "solely" to "primarily" within the definition of "religious institution," and reported the bill favorably with a vote of 6 YEAS and 0 NAYS. The Finance & Taxation Committee reported the bill favorably on March 9, 2000, with a vote of 13 YEAS to 0 NAYS. On April 11, 2000, the General Government Appropriations Committee also reported the bill favorably with a vote of 13 YEAS to 0 NAYS. On April 24, 2000, the bill was placed on the General Calendar and Laid on the Table with the substitution of Senate Bill 156.

Disposition of the Senate Bill:

SB 156 was prefiled on October 5, 1999, by Senator Klein and referred to the Committees on Banking and Insurance and Fiscal Policy. On November 3, 1999, the Committee on Banking and Insurance reported the bill favorably, and on March 16, 2000, the bill was withdrawn from the Fiscal Policy Committee. The bill was placed on the Senate Special Order Calendar on April 5, 2000. On April 11, the Senate amended the bill to conform to the House Companion and on April 12, 2000, the Senate passed the bill as amended by a vote of 39 YEAS to 0 NAYS. On April 24, 2000, the Senate Bill was substituted for HB 629 and passed by a vote of 110 YEAS to 0 NAYS.

STORAGE NAME: s0156z.fs

DATE: May 17, 2000

PAGE 8

VII. SIGNATURES:

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Susan F. Cutchins

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