

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.)

BILL: SB 156

SPONSOR: Senator Klein

SUBJECT: Funeral and Cemetery Services

DATE: November 3, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 156 revises provisions relating to the regulation of cemeteries and the sale of preneed funeral and burial contracts, by the Department of Banking and Finance and the Board of Funeral and Cemetery Services, pursuant to chapter 497, F.S.

The bill increases the annual renewal fees for cemetery licenses and for certificates of authority for persons selling preneed funeral and burial contracts, for those entities exceeding certain sales thresholds. However, the bill also eliminates examination fees for both such entities, other than for travel and per diem expenses incurred by the department for examinations outside the state. The increased annual revenue from licensure renewal fees, estimated to be \$212,050, is offset by the decreased revenue of (\$212,044) from elimination of examination fees, resulting in a total \$6 annual revenue increase to the Department of Banking and Finance Regulatory Trust Fund.

The bill also: (1) defines the term “religious institution” and substitutes that term for “church” and “synagogue” to provide consistent word usage in sections that provide exemptions from regulation; (2) allows the department or the board to adopt rules allowing for the electronic submission of documents or fees, and to accept a certification of compliance with the chapter, rather than submission of actual documents; (3) sets the application fee at \$500 for an initial certificate of authority for selling preneed funeral contract which currently may not exceed \$500; and (4) increases from \$5 to \$10, the maximum per contract fee that may be set by the board that certificateholders must pay into the Regulatory Trust Fund, currently set at \$4.

This bill substantially amends the following sections of the Florida Statutes: 497.003, 497.005, 497.103, 497.117, 497.131, 497.213, 497.245, 497.341, 497.405, 497.407, 497.431, 497.435, and 497.439.

II. Present Situation:

Chapter 497, F.S., provides for the regulation of funeral and cemetery services by the Department of Banking and Finance (department) and the Board of Funeral and Cemetery Services (board) created within the department for that purpose. Both the department 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 and burial merchandise and 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.

The chapter contains statutes that regulate *cemeteries* and certain general powers of the department, in ss. 497.001-497.361, F.S. The chapter also regulates the sale of *preneed contracts of funeral and burial merchandise*, for which a separate certificate of authority is required for any funeral home or cemetery that sells such contracts, in s. 497.401-497.531, F.S. (Funeral directors and direct disposers [cremation] are separately licensed and regulated by the Department of Business and Professional Regulation under ch. 470, F.S.)

Section 497.003, F.S., provides eight specific exemptions from the provisions of the chapter relating to cemeteries for certain church, civic, local government, and family cemeteries. However, all cemeteries are subject to provisions in ch. 497, F.S., relating to burial record keeping, solicitation practices, illegal tying arrangements, discrimination, and abandoned cemeteries. Additionally, exempted cemeteries of more than 5 acres are required to submit to investigation and mediation procedures by the department in the event of a consumer complaint.

Throughout ch. 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 no 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 application 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., as follows:

Current Cemetery Company Annual License Fees

Gross sales of at least:	But less than:	Annual License Fee
\$0	\$25,000	\$250
\$25,000	\$100,000	\$350
\$100,000	\$250,000	\$600
\$250,000	\$500,000	\$900
\$500,000	\$750,000	\$1,350
\$750,000	\$1,000,000	\$1,750
\$1,000,000+		\$2,650

Preneed Sales of Funeral and Burial Merchandise -- Section 497.405, F.S., requires all persons that sell a preneed contract for funeral merchandise or services or burial merchandise or services to apply to the board for a certificate of authority. This section includes those entities exempt from licensure as a cemetery company under s. 497.003, F.S., but makes specific exemptions for trust institutions receiving funds in trust for the sale of a preneed contract, certain qualified Florida corporations, and certain church-owned cemeteries offering specific preneed services that are located in counties with a population of at least 960,000 on July 1, 1996. Section 497.407, F.S., sets forth the requirements of annual renewals for certificates of authority.

The fee for an application for a certificate of authority and each annual renewal is set by the board, but may not exceed \$500, and must be accompanied by an annual statement. The actual fees are currently set at \$500 for the application for a certificate and \$250 for each annual renewal. A business enterprise operating under a certificate of authority may operate under a name different from the common business enterprise by submitting an application to become a branch registrant. Branch registrants pay a fee established by the board of not more than \$100, currently set at that amount. This section also requires each certificateholder 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. The current fee is set at \$4. Fees are paid to the Regulatory Trust Fund of the Division of Finance and are to be used to defray the cost of the board and the department in administering ch. 497. Section 497.439, F.S., requires preneed sales agents to submit an application for registration, along with a \$100 fee, via certified mail, return receipt requested, to the department.

Examinations by the Department -- Section 497.103(4), F.S., authorizes the department to examine the financial affairs of any cemetery company and any preneed sales certificateholder 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 travel and 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.

III. Effect of Proposed Changes:

Section 1. Amends s. 497.003, F.S. Replaces the terms “church” and “synagogue” with “religious institution,” to create uniformity of language in the chapter, with regard to current exemptions from most regulatory requirements. See the definition in Section 2, below.

Section 2. Amends s. 497.005, F.S. Defines the term “religious institution” to include an organization formed solely for religious purposes which has qualified for exemption from federal income tax as an exempt organization under the provisions s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Section 3. Amends s. 497.103, F.S., to allow the department or the board to adopt rules allowing for the electronic submission of any applications, documents, or fees required by the chapter, and to adopt rules authorizing the board or department to accept a certification of compliance with this chapter, rather than submission of the actual documents. The bill also deletes a reference to the examination fee charged to the cemetery company or preneed sales certificateholder for the department's examination of the company's financial affairs. The authority for the department to charge this fee is deleted in Section 11 of the bill.

Section 4. Amends s. 497.117, F.S., to make a technical change to clarify that the funding for the fees and costs of legal counsel shall be paid from the Regulatory Trust Fund of the Department of Banking and Finance, rather than simply referring to the “Regulatory Trust Fund.”

Section 5. Amends s. 497.131, F.S., to make a technical change to clarify that costs of legal counsel and investigators shall be paid from the department's Regulatory Trust Fund, rather than referring to the Regulatory Trust Fund.

Section 6. Amends s. 497.213, F.S. Annual license renewal fees for cemetery companies which have gross sales of less than \$750,000 would remain the same as under current law (ranging from \$250 to \$1,350). The bill increases annual license fees for cemetery companies which have gross sales of at least \$750,000 as follows:

Proposed Cemetery Company Annual License Fees

Gross sales of at least:	But less than:	Current Annual License Fee	Proposed Annual License Fee
\$750,000	\$1,000,000	\$1,750	\$2,250
\$1,000,000	\$5,000,000	\$2,650	\$3,250
\$5,000,000 +		\$2,650	\$4,900

Section 7. Amends s. 497.245, F.S., to make a conforming change to delete the provision that allows a cemetery to use trust income from its care and maintenance trust fund to be used to pay for annual examination fees, as examination fees are deleted by Section 11 of the bill.

Section 8. Amends s. 497.341, F.S. Replaces the term “church” with “religious institution” as defined in Section 2, in the section that allows church cemeteries to limit burials to church members and their families (which is an exception to certain non-discrimination requirements).

Section 9. Amends s. 497.405, F.S. Replaces the term “church” with “religious institution” as defined in Section 2, in the section that exempts church-owned cemeteries that meet certain conditions from the requirement of having a certificate of authority to sell preneed contracts.

Section 10. Amends s. 497.407, F.S. The bill sets the application fee at \$500 for an initial certificate of authority for selling preneed funeral or burial contracts, which currently may not exceed (and is set at) \$500. The bill revises the current renewal fee for certificates of authority, which currently may not exceed \$500, but is set at \$250. The annual license renewal fees under the bill would be based on the number of preneed contracts sold, as are set forth in the table below:

**Proposed Annual Renewal Fees for Certificate of Authority
for Sale of Preneed Funeral or Burial Contracts**

Number of preneed contract sales during the preceding year is at least:	But fewer than:	Proposed Annual License Renewal Fee (currently may not exceed \$500, but set at \$250)
0		\$300
1	50	\$400
50	250	\$500
250	1,000	\$850
1000	500	\$1,500
2500	5,000	\$2,500
5,000	15,000	\$6,000
15,000	30,000	\$12,500
30,000+		\$18,500

Branch registrants may still operate under the certificate of authority of the common business enterprise, but the fee is increased from \$100 to \$150, payable to the department's Regulatory Trust Fund. The board is to deposit any funds received from fines or penalties into the department's Regulatory Trust Fund. The bill also increases the maximum per contract fee that may be set by the board from \$5 to \$10 that each certificateholder must pay into the Regulatory Trust Fund for each preneed contract that it enters into. However, the current fee is \$4 and the department reports that there are no plans to increase this fee.

Section 11. Amends s. 497.431, F.S. The bill deletes the requirement that licensees selling preneed contracts pay the costs of department examinations and investigations, except that the

person or organization examined is responsible for travel and per diem expenses for out-of-state travel incurred by department representatives or examiners in connection with an examination.

Section 12. Amends s. 497.435, F.S., to make a technical change clarifying that the Regulatory Trust Fund is the department's.

Section 13. Amends s. 497.439, F.S. The bill deletes the requirement that preneed sales agent applications and application fees be sent by certified mail, return receipt requested. These items may be submitted in a form prescribed by department rule, which would allow electronic transmittal.

Section 14. This act shall take effect July 1, 2000.

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:

Section 6 of the bill increases the annual license fees for cemetery companies with more than \$750,000 in annual gross sales. See the table in Section 6, above, for the specific fee changes.

Section 10 of the bill increases the annual renewal fees for certificates of authority for selling preneed contracts, which would be based on the number of preneed contracts sold during the previous year. See the table in Section 10, above, for the specific fee changes. This section also increases the fee for branch registrants from \$100 to \$150.

Section 10 also increases the maximum per contract fee for preneed funeral and burial contracts from \$5 to \$10, payable to the Regulatory Trust Fund. However, the department indicates that there are no plans to increase the current \$4 fee that is set by rule.

Section 11 of the bill eliminates the department's authority to collect examination fees, other than travel and per diem expenses for examinations outside the state.

B. Private Sector Impact:

Under sections 6, 10 and 11, licensed cemetery companies and certificateholders selling preneed funeral or burial contracts will be subject to greater fees for annual renewal of their license or certificate. See Tax/Fee Issues above. These fees will be offset by the elimination of examination fees. Cemetery and funeral service providers will be able to factor the set fees provided in this bill into their annual budgets, instead of attempting to estimate the examination fees incurred within a 3-year examination period.

The bill also allows providers of cemetery and funeral services to electronically file their applications and fees. This results in the elimination of paperwork, both for the department and the provider.

C. Government Sector Impact:

The department estimates a \$6 annual revenue impact for all of the fee changes in the bill, based on its estimate of the increased revenue for licensure fees, offset by the decreased revenue for examination fees, as follows:

	Amount Year 1	Amount Year 2	Amount Year 3
FISCAL IMPACT ON DBF Reg. Trust Fund:	FY00-01	FY01-02	FY02-03
<u>A. Non-recurring Effects:</u> NONE	0	0	0
<u>B. Recurring Effects:</u> NONE Loss of examination fees under ch. 497, F.S.	(\$212,044)	(\$212,044)	(\$212,044)
Increase in licensing fees under ch. 497, F.S.	\$212,050	\$212,050	\$212,050
<u>C. Long-run effects other than normal growth</u> N/A			
<u>D. Total Revenues and Expenditures:</u>	\$6	\$6	\$6

Section 10 also increases the maximum per contract fee for preneed funeral and burial contracts from \$5 to \$10, payable to the Regulatory Trust Fund. However, the department indicates that there are no plans to increase the current \$4 fee that is set by rule.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
