

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 323 w/CS Funeral and Cemetery Services
SPONSOR(S): Brown & others
TIED BILLS: **IDEN./SIM. BILLS:** SB 528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance	20 Y, 2 N w/CS	Callaway	Cooper
2) Finance & Tax	20 Y, 0 N	Levin	Diez-Arguelles
3) Insurance	14 Y, 3 N w/CS	Callaway	Cooper
4)			
5)			

SUMMARY ANALYSIS

A number of media reports have publicized problems in the funeral and cemetery industry. Some of the reported problems involve cemeteries burying decedents in the wrong burial plots, improper disposal of human remains, and the sale of inadequate burial space. These reports have raised concerns about the effectiveness of current funeral and cemetery regulation.

The death care industry is currently regulated by two boards. The Board of Funeral Directors and Embalmers is part of the Department of Business and Professional Regulation (DBPR). This board regulates and licenses funeral directors, embalmers, direct disposal facilities, direct disposers, and cinerator facilities. The Board of Funeral and Cemetery Services is in the Department of Financial Services (DFS). This board regulates and licenses cemeteries, cemetery companies, monument establishments, and preneed contract sellers. The regulation primarily consists of oversight of the financial side of the death care industry. The two boards do not have overlapping duties or functions.

The bill abolishes both boards and creates a new Board of Funeral, Cemetery and Consumer Services within DFS (effective October 1, 2005). The new board will assume regulation and licensing of all individuals and facilities involved in the death care industry. The bill transfers the duties and responsibilities relating to the death care industry from DBPR to DFS by a type-two transfer. Although the bill provides some additional requirements and responsibilities for individuals and entities in the death care industry, the bill is expected to have nominal fiscal impact on the private sector.

The bill also creates a regulatory scheme for monument establishments, an area of the death care industry left largely unregulated under current law. The bill authorizes monument establishments to sell preneed contracts upon licensure.

The bill addresses several areas relating to consumer concerns in the regulation of funeral and cemetery activities. Specifically, the bill:

- Sets statutory standards for grave spaces and sizes;
- Requires the creation of certified land surveys to map the location and identification of grave spaces;
- Provides for the identification of human remains on the inside and outside of burial containers;
- Clarifies contract cancellation and refund provisions.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

Reduce government: This bill increases the level of government regulation over licensed funeral establishments, licensed cemetery establishments, licensed funeral directors, embalmers, direct disposers, and monument establishments.

Lower taxes: The bill requires an additional licensing fees.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

During the past few years, numerous media reports have publicized alleged problems in the funeral and cemetery industry, raising concerns about the effectiveness of funeral and cemetery regulation and its ability to protect Florida's consumers. Some of the reported problems involve cemeteries accused of burying decedents in the wrong burial plots, improper disposal of human remains, and the sale of inadequate burial space.

Chapter 470, F.S., governs funeral directors, embalming and the practice of cremating human remains. The Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation (DBPR) administers and enforces the provisions of chapter 470, F.S. This Board is the regulatory body that oversees the health, safety, and welfare regulations of those involved in the disposal of human remains. The regulatory scheme for these activities requires oversight of the professional's personal knowledge of proper disposal practices and the latest health and safety developments related to those practices. Continuing education and testing requirements assist the board in verifying the knowledge level of the licensees. The Board of Funeral Directors and Embalmers contains 7 members appointed by the Governor and confirmed by the Florida Senate.

Chapter 497, F.S. governs cemeteries, cemetery companies, and preneed contracts for funeral merchandise or services. The Board of Funeral and Cemetery Services within the Department of Financial Services (DFS) administers and enforces the provisions of chapter 497, F.S. This Board is the regulatory body that oversees the financial interest activities of cemetery owners and operators, funeral directors, and any other person in the death care industry that contracts for the sale of preneed services and merchandise. The regulatory scheme for these activities requires oversight of the participating company's financial stability and contractual behavior with its clients. The Board of Funeral and Cemetery Services contains 7 members appointed by the Governor from nominations from the CFO and confirmed by the Florida Senate.

PROPOSED CHANGES

Board of Funeral, Cemetery and Consumer Services (new board)

The bill abolishes the Board of Funeral Directors and Embalmers currently within DBPR and the Board of Funeral and Cemetery Services currently within DFS and creates the Board of Funeral, Cemetery and Consumer Services (new board) within DFS (effective October 1, 2005).¹

The new board will contain 10 members, 9 of which are appointed by the Governor from nominations from the CFO and confirmed by the Florida Senate. The tenth member is the State Health Officer or his/her designee. This member is not appointed by the Governor or confirmed by the Florida Senate. Currently, the board within DBPR and the board within DFS has 7 members each (14 members total). Accordingly, the bill reduces the board membership by four members. The members of the two current boards are not reappointed on the new board to serve out their terms. Rather, a whole new board is to be appointed under the bill.

The new board's composition is as follows:

- Two members must be licensed funeral directors, who are associated with a funeral establishment.
- One member must be a licensed funeral director, who is associated with a licensed funeral establishment, has a valid preneed license and owns or operates an approved cinerator facility.
- Two members must be persons whose primary occupation is associated with a licensed cemetery company.
- One member must be a licensed monument dealer
- One member must be the State Health Officer or his/her designee.
- Three members must be consumers who are residents of Florida, who have never been licensed as funeral directors or embalmers, and who are not connected with a cemetery or cemetery company, the death care industry, the practice of embalming, funeral directing or direct disposition.²

The bill provides that no more than one member of the new board can come from any one company or group of companies under common control. This should assure no single entity can exert undue influence on the operations of the new board.

Members of the new board, except for the State Health Officer or his/her designee, serve four year terms. This is consistent with membership terms of the two boards currently in existence. The State Health Officer member serves on the new board as long as he/she holds office.

After each of the new board member's initial four year appointment expires, terms will be staggered, with some of the new board members being reappointed for two years.

The Governor currently has authority to suspend members of the two current boards for malfeasance, neglect of duty, incompetence, permanent inability to perform official duties or commission of a felony.³ This bill deletes the commission of a felony reason for suspension and replaces it with commission of a

¹ The Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General recommended consolidation of the two existing boards into one board "to reduce regulatory fragmentation and increase efficiency." Special Examination: Florida's Regulation of the Death Care Industry Has Many Weaknesses, Results of a Joint Examination Conducted by the Office of Program Policy Analysis and Government Accountability and the Auditor General, Report No. 02-21 (March 2002).

² One of the consumer members must be at least 60 years of age or older. One consumer member must be licensed as a certified public accountant. Neither of the two boards currently in existence require a licensed CPA as a consumer member.

³ s. 455.209(1), F.S. (2003); s. 497.113(1), F.S. (2003)

crime. It also adds a reason for suspension of “other substantial cause as determined by the Governor to evidence a lack of fitness to sit on the board.”

The bill sets forth circumstances that will result in a board member being deemed to have resigned his board membership. The circumstances are similar to those contained in current law for board members of the two boards currently in existence.⁴

The bill adds the requirement that actions of current or former board members are exempt from civil liability when acting in good faith in his/her official capacity. Current law includes members of the board’s probably cause panel from the exemption from civil liability. Additionally, current law does not require the members’ actions to be in good faith in order for the exemption to attach.⁵

Currently, the Department of Legal Affairs defends members of the board within DFS against civil suit and the Department of Legal Affairs **or** outside counsel defends members of the board within DBPR against civil suit.⁶ The bill changes the legal entities defending the board members against civil suit to the Department of Legal Affairs **and** the Division of Risk Management.

The bill provides the new board’s headquarters is at DFS in Tallahassee. The two boards currently in existence are headquartered in Tallahassee too.

The bill requires the chair and vice-chair for the new board to be appointed by the CFO, rather than be elected by the board members. The chair and vice-chair for the two boards currently in existence are selected by the board members.⁷

The bill requires the new board meet a minimum of every 6 months.

Currently, the chair of the both boards or a quorum of either board can call meetings other than the annual meeting.⁸ The bill allows only the CFO to call special meetings of the new board.

Both current law and this bill provide for compensation to board members of \$50 for each day’s attendance at official meetings and for compensation for out-of-state travel.

Rulemaking

The bill gives rulemaking authority to the new board. It also makes the new board the licensing authority for all matters related to the death care industry. As the licensing authority, the new board controls all aspects of the death care professions licensing examinations, reexaminations, apprenticeships/internships, construction of facilities by licensed entities, standards of operations by licensed entities, continued education requirements of licensees, disciplinary guidelines, disciplinary procedures, disciplinary sanctions, and professional fees.

The bill gives DFS sole authority over: investigations, financial examinations, inspections, receipt of fees, promulgation of forms or procedures to be used by applicants or licensees, administrative or judicial action, procedures and requirements relating to security of examinations, personnel and equipment to be used to comply with the statute, contractual matters relating to implementation of the statutes, service and prosecution of administrative complaints relating to the statutes, enforcement of orders, representation in appellate matters, emergency action against a licensee, and the budget.

⁴ s. 455.207(3), F.S. (2003); s. 497.109(3), F.S. (2003)

⁵ s. 455.209(2), F.S. (2003); s. 497.113(2), F.S. (2003)

⁶ s. 455.209(2), F.S. (2003); s.497.113(2), F.S. (2003)

⁷ s. 455.207(2), F.S. (2003); s. 497.109(2), F.S. (2003)

⁸ s. 455.207(3), F.S. (2003); s. 497.109(3), F.S. (2003)

The bill gives the new board authority to promulgate rules relating to matters under its control and authority and gives the department authority to promulgate rules relating to matters under its control and authority. It requires the new board and the department to give each other 60 days notice before initiating rulemaking, except when emergency rules need to be promulgated. The bill provides standing for the new board and DFS to challenge any rule promulgated by DFS and provides for representation in the rule challenge.

The bill requires the new board to carefully review and give substantial weight to recommendations of DFS staff concerning matters before the new board. It requires the new board to state on the record why it rejects any recommendation of DFS staff, if DFS staff requests a statement.

The bill requires the new board to adopt any recommendation made by the CFO unless 70 percent of the new board members present and voting vote to reject the CFO's recommendation. The bill limits what matters the CFO can present recommendations on to the new board.

The bill provides a 14-day stay before the new board's rejection of recommendations by DFS' staff or the CFO becomes final.

The bill gives the new board authority to issue final orders for actions under its authority. It gives DFS authority to issue final orders for actions under its authority.

The new board is given authority to establish rules relating to continuing education requirements for the professions regulated.

DFS is given authority to promulgate rules relating to inspection of premises of licensees.

DFS is given authority to adopt rules regarding compliance examinations.

The licensing authority is allowed to promulgate rules regarding complaint log requirements.

The new board is given authority to promulgate rules regarding the licensee cases presented to probable cause panels.

The new board is given authority to promulgate rules specifying what violations of Ch. 497 will be considered minor violations and thus subject to less stringent disciplinary measures.

DFS is given authority to promulgate rules for implementation of receivership provisions of Ch. 497.

The new board is given authority to enact rules defining technical terms not defined in Ch. 497; rules regarding hazardous materials generated by death care industry professions; rules regarding the operation of cemeteries; rules regarding duplicate license fees; rules regarding procedure and formats for electronic submission of documents; rules regarding investigation, financial examination, and inspection of licensees; and rules establishing how DFS can use the technical expertise of board members.

The new board is given authority to promulgate rules regarding the procedure and requirements for applicants to appear before the board before issuance of a license.

The licensing authority is given authority to establish rules regarding approval of a licensed cemetery's sale, mortgage, lease, or encumbrance.

Authority is given to the licensing authority to promulgate rules exempting spouses of members of the Armed Forces from license renewal provisions if the licensee is located out of state due to the military service of their spouse.

The licensing authority for preneed sales is given authority to adopt rules for implementation of claims against the Preneed Funeral Contract Consumer Protection Trust Fund of for specifying procedures and criteria for approval of trusts for preneed sales.

Fees

The bill allows the new board to set fees by rule. The fee set must be based on DFS' estimate of revenue needed to implement the law. The bill requires DFS to provide the new board with an annual estimate of costs of implementation of the law. DFS is given authority to set fees if the new board does not set fees sufficient to cover costs of implementation within one year after notification by DFS that fees need to be increased. Every four years, the bill allows the new board to assess a one-time fee to cover any difference in the amount needed to implement the law and the fees collected.

The fees collected are to be deposited in the Regulatory Trust Fund of DFS.

The maximum fee for a duplicate license is set by the bill at \$25. A maximum fee for certification of a public record is set by the bill at \$25. A \$5 fee for unlicensed activity is provided by the bill to be assessed at the time a license is initially approved and at each renewal of the license.

Licensing

The bill provides specifics as to what an application for license can include, provides parameters for DFS to investigate an application for license, and provides grounds for DFS to refuse to rule on an application. The bill allows an applicant to demonstrate competencies in an area required to be satisfied by classroom instruction hours as an alternative to proving the applicant has the required classroom instruction hours.

The bill contains provisions regarding submission of fingerprints by applicants and the procedure to be followed by DFS and the Florida Department of Law Enforcement in the processing of the fingerprints and obtaining a criminal background check of the applicant. It also requires additional information for completion of an application for an applicant with a specified criminal history within the previous 10 years.

The bill requires DFS to implement a system for administering the licensing procedures and for tracking applications and licenses. DFS is granted authority to contract with an outside vendor for implementation of the licensing system.

The bill provides for a limited license to be issued to retired professionals. It sets a maximum fee of \$300 for a limited license and provides a process for applying for and processing the license. The limited license is available only for retired professionals to practice in indigent, underserved, or critical need populations of Florida. The retired professional can only be employed by public agencies or institutions or nonprofit agencies or institutions.

The bill specifics continuing education requirements for the professions regulated by the new board. The new board is given rulemaking authority to establish continuing education requirements. DFS is required to establish a system to monitor compliance with continuing education requirements and is given authorization to contract with another agency or outside vendor for establishment of the compliance monitoring system.

Examinations

The bill provides for contracting with an outside vendor for preparation, administration, scoring, reporting, and evaluation of examinations. DFS is allowed to contract with DBPR for examination services.

The bill also provides specific procedures to be used with examinations, such as requirements for maintaining security of the exams, selection of examiners, retaking exams, etc.

Investigations

The bill requires investigation of all complaints of violations of chapter 497 or administrative rules relating to chapter 497. Investigations are allowed for licensees or applicants. Investigations may also be made to determine if members of the public are engaging in unlicensed activity.

The bill requires any person under investigation to disclose all materials pertinent to the investigation to DFS. It sets forth the activities DFS may engage in as part of its investigation, such as administering oaths, examining witnesses, receiving evidence, etc. It allows DFS to retain and compensate experts, as needed, for an investigation.

The bill provides a public records exemption for the administrative complaint and all information obtained by DFS in its investigation of the complaint. The bill also provides for exceptions to the public records exemption.

Inspections

The bill allows DFS to inspect a licensee's premises and records to ensure compliance with chapter 497. The inspections do not have to be announced by DFS in advance. DFS is given authority to promulgate rules relating to inspection procedures.

Compliance Examinations

DFS is given authority in the bill to examine facilities, records, trust accounts, financial affairs, etc. of existing licensees to ensure the licensee is in compliance with Chapter 497. The bill provides requirements and procedures to be followed by DFS and the licensee when a compliance exam is undertaken. The requirements and procedures are similar to the ones relating to investigations by DFS.

Within a reasonable period of time after completion of the compliance examination, DFS must provide a copy of an examination report to the licensee. The licensee then has 30 days to respond to the report.

The examination report is admissible as evidence in any future judicial or administrative proceeding involving the licensee even though the evidence code (chapter 90) may not allow its admission.

DFS is given authority to adopt rules regarding compliance examinations.

Complaint Log

All licensees, except for preneed sales agents, must maintain a log of all written complaints received by the licensee about any aspect of their business. The bill provides what information the complaint log must contain, provides a deadline for entering complaints into the log, and provides retention time frames. The licensing authority is allowed to promulgate rules regarding complaint log requirements.

Discipline

The bill provides grounds for denial of an application, imposition of discipline, and other enforcement action against the licensee or other person committing the prescribed conduct.

Discipline actions not eligible for a citation or noncompliance must be presented to a probable cause panel of the new board.

Licensee actions requiring emergency discipline are not subject to the probable cause panel procedures. The bill provides the procedure of probable cause proceedings, composition of the probable cause panel, and deadlines for probable cause determinations. It gives the new board rulemaking authority to enact rules further specifying what categories of licensee cases may be presented to the probable cause panels. If the probable cause panel finds probable cause exists, it must direct DFS to file an administrative complaint against the licensee.

The bill provides the procedure to be followed by DFS in the filing, service, and prosecution of an administrative complaint against a licensee. Proposed settlement of cases with an administrative complaint must be presented by DFS to the new board for approval or rejection. A final hearing on an administrative complaint is to be held by an administrative law judge from the Division of Administrative Hearings (DOAH).

The bill provides penalties for discipline. Penalties include: denial of a license application, issuance of a written reprimand, probation of the licensee, assessment of an administrative fine of up to \$5,000/separate offense, suspension of the licensee's license, and revocation of the licensee's license.

The new board can also restrict a licensee's assets as part of the disciplinary process if the restriction is needed to protect consumers/purchasers of the disciplined licensee.

The bill makes conforming changes to disciplinary provisions currently contained in Ch. 497.

The bill specifies what type of discipline will be taken for unlicensed activity and the procedure for such discipline. The discipline will, in part, consist of a cease and desist order issued by DFS and an administrative fine of up to \$10,000/violation.

The bill specifies different actions of licensees, board members, the public or DFS employees that are considered a misdemeanor or a felony.

Receivership

The bill allows DFS to request a circuit court to appoint a receiver for any licensee or other person conducting unlicensed activity. DFS is given rulemaking authority to enact rules regarding the receivership provisions of Ch. 497.

Trust Funds

Officers, owners, and directors of any licensee are held jointly and severally liable for any deficiency in any trust fund required by Ch. 497.

Administrative Matters

The bill transfers most of the provisions of Ch. 470 to Ch. 497. It makes conforming changes to the transferred sections. The bill also copies many of the provisions in Ch. 455 to Ch. 497 and makes conforming changes to them.

Under the bill, DFS is required to establish and operate a toll-free telephone hotline to receive complaints and provide information about the death care industry.

Applicants for a new license and applicants for a license renewal must be screened by the Title IV-D child support agency to ensure the licensee is in compliance with all child support obligations. DFS is required to suspend or deny a license for any licensee with a delinquent child support, if a court directs the license suspension or denial. The license must be granted or reinstated when the child support obligation is satisfied.

Sovereign immunity is granted to persons under contract with DFS.

The bill provides deadlines for submission of license applications. It allows the new board to set rules relating to procedures and requirements for applicants to appear before the new board.

Attorney fees and costs are recoverable from the non-prevailing party in any civil litigation resulting from a violation of Ch. 497.

After October 1, 2006, licensees offering to provide burial rights, merchandise or service to the public must display and provide to customers a consumer information brochure regarding cemetery and preneed sales.

The bill repeals the following sections of current law: 470.001, 470.002, 470.003, 470.005, 470.019, 470.023, 470.027, 470.028, 470.031, 470.033, 470.034, 470.035, 470.036, 497.105, 497.109, 497.111, 497.113, 497.115, 497.117, 497.119, 497.123, 497.125, 497.127, 497.129, 497.131, 497.135, 497.137, 497.209, 497.217, 497.221, 497.225, 497.233, 497.301, 497.341, 497.431, 497.435, 497.443, 497.445, 497.447, 497.515, 497.517, 497.519, and 497.529.

Division of Funeral, Cemetery and Consumer Services

The bill creates the Division of Funeral, Cemetery and Consumer Services (the new division) within DFS (effective October 1, 2005). The new division will be headed by a director who is appointed by the CFO and serves at the CFO's pleasure. The bill sets forth the responsibilities of the director of the new division. The director of the new division will also serve as executive director of the new board.

A type-two transfer is authorized to transfer all duties, powers, personnel, property, records, funds, and functions of the two existing boards to the new board. The type two transfer will occur on October 1, 2005, the effective date of the bill. The bill provides for the substitution of the new division in any judicial or administrative proceeding involving the two existing boards on the effective date of the bill. The bill maintains the validity of licenses orders and certificates of authority issued under chapter 470, F.S. and chapter 497, F.S. on the date of the abolishment of the two existing boards and the creation of the new board. The rules in effect on the date of abolishment of the board within DBPR are transferred to DFS. The rules of the board currently within DFS become the rules of the new board.

All fees and penalties collected pursuant to chapter 470, F.S. are to be deposited in the Regulatory Trust Fund of DFS. Currently, moneys collected for fees and penalties pursuant to chapter 470 are deposited in the Professional Regulation Trust Fund in DBPR.

Definitions

The bill emerges the current definitions in Ch. 470 and Ch. 497 to Ch. 497 alphabetizes definitions and adds the following definitions to Ch. 497:

- Alternative container,
- Body parts,

- Centralized embalming facility,
- Cinerator,
- Closed container,
- Control,
- Cremated remains,
- Cremation chamber,
- Cremation container,
- Cremation interment container,
- Direct disposal establishment,
- Director,
- Division,
- Embalmer,
- Funeral establishment,
- Funeral merchandise or merchandise,
- Funeral or funeral service,
- Human remains or remains of dead human body (ies),
- Legally authorized person,
- License,
- Licensee,
- Niche,
- Person,
- Personal residence,
- Practice of direct disposition,
- Practice of embalming,
- Practice of funeral directing,
- Preneed sales agent
- Principal,
- Processing,
- Profession and occupation,
- Pulverization,
- Refrigeration facility,
- Removal service,
- Rules,
- Temporary container and,
- Urn,

The bill amends other definitions in Ch. 470 and 497.

The bill makes conforming changes to definitions in ss. 316.1974, 381.0098, 382.002, 403.703, 406.02.

General Provisions Relating To Funeral Directing and Embalming

The bill requires all persons engaging in funeral directing or embalming to be licensed. It delineates the procedure, fee, and requirements for inactive and delinquent licenses and reactivation of them. It outlines the procedure for renewal or cancellation of a license. It requires all funeral director or embalmer licensees to complete a continuing education course in human immunodeficiency virus and acquired immune deficiency syndrome within a specified time period.

Embalmer Provisions

Embalming is currently regulated by DBPR. The bill transfers the regulation and licensure of embalmers to DFS. Currently, embalmers are registered with DBPR. The bill replaces the registration requirement with a licensure one.

The licensing fee for an embalmer is increased from a maximum of \$50 to a maximum of \$200. The licensing fee for a provisional embalmer license is increased from a maximum of \$125 to a maximum of \$200. The licensing fee for an embalmer license by endorsement is increased from a maximum of \$50 to a maximum of \$200. The licensing fee for a temporary embalmer license is increased from a maximum of \$125 to a maximum of \$200. The licensing fee for an embalmer intern is increased from a maximum of \$100 to a maximum of \$200. The licensing fee for an embalmer apprentice is increased from a maximum of \$50 to a maximum of \$200. All embalmer licensing fees are set by rule by the licensing authority.

Section 497.371, F.S. provides for an embalmer apprentice program. Embalmer apprentices perform tasks, functions, and duties relating to embalming under the direct supervision of a licensed embalmer.⁹

The bill extends the embalmer apprenticeship from 1 year to 3 years if the embalmer is not enrolled in and attending a course in mortuary science or funeral science while in the apprenticeship or from 3 years to 5 years if the embalmer is enrolled in or attending these course while in the apprenticeship.

Funeral Director Provisions

Under current law, funeral directors are licensed. This is unchanged in the bill. However, the bill changes the licensing agency from DBPR to DFS.

The bill increases the application fee for a funeral director license from a maximum of \$50 to a maximum of \$200. The licensing fee for a funeral director provisional license is increased from a maximum of \$125 to a maximum of \$200. The application fee for a funeral director license by endorsement is increased from a maximum of \$50 to a maximum of \$200. The initial issuance or renewal fee for a temporary funeral director license is increased from a maximum of \$125 to a maximum of \$200. The application fee for a license as a funeral director intern is increased from a maximum of \$100 to a maximum of \$200. The licensing, application, and renewal fees are set by rule by the licensing authority.

Direct Disposal Provisions

Under current law, a direct disposer must be registered with DBPR if he/she is not a licensed funeral director.¹⁰ DBPR currently regulates direct disposers and direct disposal establishments. The bill changes the registration requirement for direct disposers to a licensure requirement. The licensing authority within DFS is given regulation over direct disposers.

The bill specifies the application procedure and fee for licensure as a direct disposer. The application fee is \$300 and may be increased to \$500. The bill also specifies grounds for approval and denial of direct disposer application. The bill requires public display of a direct disposer license.

The bill requires a direct disposer to practice at a licensed direct disposal establishment (which may be a licensed cinerator). It provides an application procedure for obtaining a direct disposal establishment license. The application fee for a direct disposal establishment license is \$300 and cannot exceed

⁹ s. 470.0085, F.S. (2003)

¹⁰ s. 470.017(1), F.S. (2003)

\$500. The bill specifies grounds for approval and denial of a direct disposer establishment application. It also provides circumstances for issuance of a probationary direct disposal establishment license.

A direct disposal establishment license must be renewed biennially with a \$200 renewal fee. The renewal fee can be increased to \$400.

Each direct disposal establishment must have one full time licensed direct disposer or funeral director acting as a direct disposer in charge at all times.

The bill specifies a minimum square feet requirement (625 interior contiguous) for direct disposal establishments. Currently, a 625 minimum square foot requirement is contained in an administrative rule.¹¹

The bill also requires direct disposal establishments to have suitable capacity for refrigeration and storage of dead human bodies or to make arrangements for such. Current law allows the board within DBPR to set standards on refrigeration and storage by rule.¹² A current administrative rule contains similar requirements for refrigeration and storage as the proposed legislation.¹³

The bill increases the number of continuing education hours from three to six for direct disposer license renewals.

All direct disposal establishments are subject to inspection of all its buildings, grounds, and vehicles by DFS, Department of Health, and local government inspectors. An inspection fee up to \$300 is required when a direct disposal establishment license is issued or renewed.

Only one direct disposal establishment can be operated at a location.

Cinerator Facility Provisions

Cinerator facilities are facilities where dead human bodies are reduced to a residue. Although this process is generally known as cremation, it can also include calcination.¹⁴ Cinerator facilities are currently regulated by DBPR. The bill changes the regulatory agency over cinerator facilities from DBPR to DFS.

The bill provides for an application process for a person to obtain a license as a cinerator facility. The application fee is \$300 and may be increased up to \$500. The bill specifies grounds for approval or denial of a cinerator facility license. The bill specifies circumstances under which a probationary cinerator license can be approved. Cinerator facility licenses must be renewed biennially. The renewal fee is a maximum of \$500.

Each cinerator facility must have one full-time licensed direct disposer or funeral director in charge of the facility. The person in charge of the facility can be in charge of only one facility.

Most of the provisions in the bill relating to cinerator facilities codify existing administrative rules. Current law gives the DBPR authority to promulgate rules for the operation of cinerator facilities.¹⁵ In response to the authorization, the DBPR has promulgated administrative rules contained in 61G8-22, F.A.C. The rules of DBPR are transferred to DFS on October 1, 2005.

¹¹ Rule 61G8-23.004(2)(e), F.A.C.

¹² s. 470.021(1), F.S. (2003)

¹³ Rule 61G8- 23.004(2), F.A.C.

¹⁴ Cremation is a process involving direct flame. Calcination is a process involving intense heat.

¹⁵ s. 470.025(2), (3), (5), (7)(a), F.S. (2003)

The bill requires inspection of each cinerator facility prior to an initial issuance of a cinerator facility license or renewal of the license. Although, Florida Statutes requires inspection only when the cinerator facility license is initially issued, an administrative rule requires inspection at issuance and at biennial renewal of a license.¹⁶ Thus, the bill is a codification of an administrative rule.

The bill also requires each cinerator facility to maintain one or more retorts (chamber) for the reduction of dead human bodies. Currently, cinerator facilities are required to maintain one or more retorts by an administrative rule.¹⁷ Thus, the bill is a codification of an administrative rule.

Additionally, the bill requires a cinerator facility to maintain refrigeration which satisfies the standards set by the Department of Health and which contains a sufficient number of shelves for the average daily number of bodies stored, if unembalmed bodies are kept at the facility site. This is a codification of an administrative rule.¹⁸

The bill requires a cinerator facility to maintain sufficient pollution control equipment to comply with the requirements of the Department of Environmental Protection (DEP) in order to secure annual approved certification. This is a codification of an administrative rule already in existence.¹⁹

The bill requires a facility to have on site or immediately available sufficient sealed containers of a type required for transportation of bodies. This is a codification of an administrative rule already in existence.

Cinerator facilities are required by the bill to maintain clean and sanitary premises. This is a codification of an administrative rule.²⁰

A cinerator facility is required to have appropriate DEP permits. This is a codification of an administrative rule.²¹

A cinerator facility must retain all signed contracts for a minimum of 2 years under the bill. This is a codification of an administrative rule.²²

Each cinerator facility must be subject to inspection at any time by DFS, Department of Health, DEP, and local government inspectors. The inspections can consist of inspection of buildings, grounds, records, equipment, and vehicles. The bill specifies other requirements for cinerator facilities, such as public display of the facility license, restriction on materials to be cremated, requirements for cremation, and reporting requirements.

Currently, the statute allows a facility to cremate more than one dead human body if permission is received from a legally authorized person for each body.²³ In addition, the bill allows a cinerator facility to rely on the permission of a legally authorized person to cremate more than one human body.

The bill provides cremation “usually includes the processing and pulverization of the bone fragments.” The processing and pulverization of human bones is not included in the current definition of “cremation,” but is contained in the amended definition provided in the bill.

The bill allows cinerator facilities to place cremated remains in a temporary container following cremation. No such provision is contained in current law as “temporary container” is not defined.

¹⁶ Rule 61G8-22.002, F.A.C.; s. 470.025(2), F.S. (2003)

¹⁷ Rule 61G8-22.002(1), F.A.C.

¹⁸ Rule 61G8-22.002(2), F.A.C.

¹⁹ Rule 61G8-22.002(3), F.A.C.

²⁰ Rule 61G8-22.002(5), F.A.C.

²¹ Rule 61G8-22.002(6), F.A.C.

²² Rule 61G8-22.002(7), F.A.C.

²³ s. 470.025(6), F.S. (2003); Rule 61G8-22.004(2), F.A.C.

The bill requires operators of cinerator facilities to establish written procedures for the removal of remains and bone fragments resulting from cremation and the postcremation procedures. The written procedures are required to be filed with the licensing authority and approved by it. Alternatively, the cinerator facility may adopt the licensing authority's uniform procedures as long as the facility notifies the licensing authority of its decision to use the uniform procedures. A copy of the procedures of the facility must be provided, upon request, to customers, DFS, or other legally authorized persons. Cinerator operators following the written procedures are immune from liability for the unintentional or incidental commingling of human remains or bone fragments left after cremation or the postcremation procedure. The current law contains no immunity for cinerator facility operators for commingling remains and does not require written procedures for the removal of remains.

The bill allows cremation of parts of human remains if a legally authorized person requests the cremation of human parts. The allowance for cremation of parts of human remains is an addition to current law which allows only cremation of human remains, not parts of human remains. Cremation of body parts is not allowed under current law or the bill.

Funeral Establishment Provisions

Funeral establishments are currently regulated by DBPR. The bill transfers regulation of them to DFS.

The bill requires a funeral establishment to maintain or make arrangements for the refrigeration and storage of dead human bodies **and** a preparation room for embalming dead human bodies. Alternatively, the bill requires a funeral establishment to make arrangement for a preparation room as established by board rule. Current law requires a funeral establishment to maintain or make arrangements for the refrigeration and storage of dead human bodies **or** maintain and make arrangements for a preparation room for embalming dead human bodies.

The delinquency fee for a delinquent funeral establishment license is increased from \$50 to \$50/per day.

The annual inspection fee for funeral establishments is increased from a maximum of \$100 to a maximum of \$300.

The bill allows the licensing authority to deny, suspend or revoke a funeral establishment's license if any person identified in the funeral establishment's application has been or in the future is disciplined for an offense constituting a violation of Ch. 497. Current law only allows denial, suspension, or revocation of the license if anyone identified in the application has previously been disciplined for an offense constituting a violation of Ch. 497.

Removal and Refrigeration Services Provisions

A late renewal penalty fee for a license of removal services and refrigeration services is increased from \$50 to \$50 per day.

Embalming Facility Provisions

A late penalty fee for renewal of an embalmer facility license is increased from \$50 to \$50 per day. The annual inspection fee for embalming facilities is increased from a maximum of \$100 to a maximum of \$300.

Reporting Requirements

The bill extends the deadline for funeral establishments, direct disposal establishments, cinerator facilities, and embalming facilities to submit a required report on the disposition of dead human bodies handled by the establishment/facility for the previous month from the 10th day of the month to the 20th day of the month.

Prohibitions/Penalties

Excluding preneed contracts, the bill prohibits the guarantee of the price of goods and services at a future date by any person.

Identification of Human Remains

The bill requires a funeral director, embalmer or direct disposer in charge of a final disposition to put an identification tag in the casket (on a decedent's wrist or ankle) **and** other container containing a decedent or his/her remains. Currently, identification tags are only required on a decedent's wrist or ankle **or** in the casket or other container; thus this is an additional requirement. The bill deletes the requirement the tag contain the decedent's social security number. Current law requires the identification tag to contain the decedent's name, date of birth, date of death and social security number.

Effective October 1, 2005, for decedents or human remains interred in unlicensed cemeteries, the bill requires the **licensed funeral establishment** to insure the decedent or decedent's remains are properly identified by the placement of a permanent identification mark or tag indicating the decedent's name and date of death on the outer burial container, cremation interment container, other container, on the inside of a crypt or on the inside of a niche. For decedents or human remains interred in licensed cemeteries, the bill requires the **licensed cemetery** to place the identification tag or mark on the outside of the burial or cremation container. This identification is in addition to the identification required to be placed in the casket or other container containing a decedent or his/her remains. Current law does not require any identification tag on the outside of a burial container; it only requires identification on the inside of the container. Additionally, the bill gives authority to the new board to further specify requirements of the identification tag or mark.

The bill further allows a licensed cemetery to rely entirely on the decedent's identity stated in the burial transit permit or supplied by a person licensed under Ch. 497 and makes a licensed cemetery immune from liability for any difference between the identity shown on the burial transit permit or on the decedent's identity supplied by an embalmer or funeral director and the actual identity of the decedent buried.

The bill requires direct disposal establishments to establish a system of identification of human remains received. The purpose of the identification system is to track the identity of the remains from the time of receipt until delivery of the remains to an authorized person. On request, a copy of the identification system is to be available to DFS and to legally authorized persons. No identification system is required by current law.

Cemetery Company Provisions

The bill requires a cemetery company's bylaws to include minimum standards for access for the installation of burial merchandise and requires the company to comply with its bylaws on this issue.

Currently, a cemetery company's bylaws are only required to address minimum standards for burial merchandise or the installation of burial merchandise.²⁴ Additionally, there is no requirement for cemetery companies to comply with their bylaws in current law.

The bill does not all allow cemeteries to deny burial space because of race or color, but allows cemeteries to designate parts of cemeteries to persons whose religious code requires isolation. There are no similar provisions in current law.

A license from DFS is required by any person operating a cemetery.

The bill provides, in part, licensure procedures, license fees, net worth requirements of the applicant, required cemetery acreage, required financial disclosure of the applicant, required cemetery mapping, and a nonrefundable application fee of \$5,000. The bill provides similar procedures and requirements for the sale of a cemetery license to another person or entity.

A cemetery company license cannot be issued until the applicant establishes a care and maintenance trust fund containing at least \$50,000, files a certification of title to cemetery land, files approval of the local zoning authorities for the cemetery, designates a general manager, provides documentation of at least 2 acres of developed burial space, and provides documentation of recordation of the required notice in the county's public records. These requirements are contained in current law.

The bill precludes a licensed cemetery from being sold, mortgaged, leased or encumbered without prior approval of the licensing authority. The licensing authority is given authority to adopt rules relating to a licensed cemetery's sale, mortgage, lease, or encumbrment.

Burial Rights Broker

The bill increases the fee for licensure as a burial rights broker from \$150 to \$250. The renewal fee may be increased (from \$100 to an amount set by rule but not to exceed \$250.) The bill allows the licensing authority to require the broker to maintain specified records for inspection by DFS as long as the requirement is set by rule.

Standards for Grave Space

The bill sets forth the minimum measurements in length, width and depth of adult grave space established after October 1, 2005. Current law contains no requirements for grave space, but rule 69K-6.008, F.A.C. requires the interment to be at least twelve inches deep. This is consistent with the bill's depth requirements for grave space.

The bill also requires licensed cemeteries to obtain a survey of undeveloped land and to obtain a map of the survey reference markers by October 1, 2005, and prior to the sale of grave spaces in undeveloped cemetery land. The bill sets forth specific components for the map. It requires the cemetery company to maintain the map and make the survey and map available to DFS and to the public. The only requirement relating to cemetery maps in current law is contained in rule 69K-6.005(14), F.A.C. This rule requires cemeteries to allow DFS to inspect detailed maps of the cemetery.

Monument Provisions

The bill contains many changes to the law regarding monuments and monument establishments. Monuments are products used to identify a grave site. Cemetery memorials of all types are also considered monuments. Although monuments can be items other than headstones, generally, monuments are known as headstones to laypersons. Monuments are sold to the public by monument

²⁴ s. 497.305(3), F.S. (2003)

establishments. Under current law, monument establishments are registered with DFS; however, there are few statutory provisions regarding regulation of them.²⁵ Monument establishments are the only establishments in the death care industry not substantially regulated by a state agency. Thus, many of the bill's provisions relating to monument establishments provide regulation criteria for them. The bill also changes the licensing of monument establishments from registration to license.

The bill specifies what information must be provided to the licensing authority by an applicant applying for a license as a monument establishment. The application fee for a monument establishment license is up to \$500. The bill specifies what criteria constitute denial of an application for monument establishment. The bill provides a procedure for approval of a probationary monument establishment license for applicants the licensing authority determines has borderline qualifications. The bill provides guidelines for probation monument establishment licenses. Monument establishment licenses are not transferable or assignable.

The bill provides different renewal fees, depending on whether the monument establishment licensee also holds a preneed sales license. The renewal fees are increased from current law for a monument establishment which also holds a preneed sales license.

The bill amends current law to allow companies that own and operate a cemetery to establish reasonable rules for style and size of a monument as long as the rules are applied to all monuments. Current law only authorizes cemetery companies to make such rules.²⁶

The bill also requires companies that own and operate a cemetery to be subject to the prohibitions and requirements contained in the current law relating to installation, care, maintenance, and liability for damage after installation of monuments. Current law only requires cemetery companies to be subject to such prohibitions and requirements.²⁷

The bill also requires any licensee offering to provide burial rights, merchandise or services to the public to provide each customer a complete description of any monument, marker or memorialization to be placed at the gravesite. Current law does not require a description.

Absent a written extension for delivery, the bill provides failure of a monument establishment to deliver and install a monument by the date specified in the sales agreement entitles the purchaser to a full refund. The purchaser can receive a complete refund if the purchaser provides the monument establishment/seller a written request for refund. Upon receipt of a written request for refund by a purchaser, the monument establishment must give the purchaser a complete refund of all monies paid within 30 days. If the monument establishment breaches the monument purchase contract by failing to deliver the purchased goods within the timeframe specified in the purchase contract, the purchaser can purchase a new monument from another monument establishment. Current law requires monument delivery and installation within 120 days of the date of sale unless an extension is requested and does not provide any remedy to a monument purchaser for failure of the monument establishment to deliver the purchased monument.²⁸

By January 1, 2006, the bill also requires a monument seller to obtain approval of a sales agreement from the licensing authority for the sale of monuments and to provide a complete description of the monument, marker or related product to be delivered and agreed delivery and installation date in the sales agreement. Current law does not require DFS to review contracts relating to monument purchases.

²⁵ s. 497.361(1), F.S. (2003)

²⁶ s. 497.325(2)(a), F.S. (2003)

²⁷ s. 497.325(2)(b), F.S. (2003)

²⁸ s. 497.361(5), F.S. (2003)

The bill establishes an inspection program for monument establishments to be contained in DFS. No inspection program is in current law.

By January 1, 2006, the bill requires a monument establishment to:

- Be located at a specific street address,
- Consist of an office and display area for monument products,
- Be open to the public during normal business hours,
- Contain facilities to inscribe monuments,
- Be compliant with local zoning regulations,
- Be located on property that is not tax-exempt, and
- Contain equipment to deliver and install monuments.

Current law requires a monument establishment to be a physical structure at a specific street address. This requirement is deleted in the bill and replaced with the above-delineated requirements.

Beginning January 1, 2006, all monument establishments are required to have written procedures for the receipt, investigation, and disposition of customer complaints. The monument establishment also has to maintain all records of written complaints for DFS inspection. The bill provides other requirements for a monument establishment's complaints.

Each person selling, monuments, markers or related products is required to be licensed as a monument establishment sales agent. The bill provides an application procedure, requirements for the application, an application fee, and approval or denial grounds for an application.

Preneed Sales Provisions

A growing number of consumers pay for funeral and cemetery services and merchandise in advance, a practice known as "preneed" or "prepaid funeral service arrangement."²⁹ An estimated 9 to 11 million Americans have spent \$21 billion on pre-need funeral services.³⁰ Preneed sales are currently regulated by DFS. This bill does not change the regulatory entity.

Currently, sellers of preneed contracts:

- Must obtain a certificate of authority from DFS,
- Must be licensed funeral establishments, licensed cemetery companies, or licensed direct disposers,
- Must abide by statutes and administrative rules regarding the receipt, deposit, and accounting of preneed sales moneys, and
- Are subject to discipline by DFS.

Preneed sales agents are those persons offering preneed contracts to the public or those persons who execute preneed contracts. Currently, preneed sales agents must be registered with DFS.³¹ The bill changes the preneed sales agent requirements from a registration requirement to a licensed requirement. A preneed sales agent can be licensed on behalf of more than one preneed licensee. The bill provides the licensing procedures for preneed sales agents. The application fee for a preneed sales agent is \$100. A probationary preneed sales agent license is available with certain circumstances. The bill outlines the application procedures for a preneed license. The application fee is a maximum of \$500.

²⁹ Special Examination: Florida's Regulation of the Death Care Industry Has Many Weaknesses, Results of a Joint Examination Conducted by the Office of Program Policy Analysis and Government Accountability and the Auditor General, Report No. 02-21 (March 2002).

³⁰ Id.

³¹ s. 497.439(1), F.S. (2003)

The bill also outlines the criteria the applicant must meet in order to get a preneed license application approved. The bill outlines circumstances warranting a probationary preneed license.

The bill requires a preneed licensee to provide notice to the licensing authority before a change in control of the licensee. A change in control can be disapproved or regulated. A transfer of a preneed license costs up to \$500.

All preneed licenses expire on June 1st of each year. In order for a preneed license to be renewed, the licensee must submit his/her financial statements for review by the licensing agency. The bill provides a late fee of \$50/day for each day the statements are late. Preneed license renewal fees are based on the number of preneed contract sales the preceding year and range from \$300-\$18,500.

Each time a preneed sale is made, the preneed licensee must pay \$10 to be deposited in the Regulatory Trust Fund at DFS.

The bill allows for licensure as a branch licensee for persons part of a common business enterprise that has a preneed license, but desires to operate under a different name than the common business enterprise name. The application annual renewal fee for a branch licensee is a maximum of \$300 each. Current law does not provide for branch licensees. The preneed licensee sponsoring the branch licensee is held responsible for the conduct and performance of the preneed branch licensee.

The bill requires preneed licensees to annually report all trust activities. The bill prohibits investments or loans from a trust fund to any entity in which the preneed licensee or their specified relatives have a direct or indirect interest or to any preneed licensee or their specified relative without prior approval by the licensing authority.

After January 1, 2006, the bill precludes a preneed licensee from obtaining a surety bond to cover its preneed liabilities in lieu of placing money in trust to cover preneed liabilities.

The bill adds monument establishments as an entity authorized to sell preneed contracts if the establishment obtains a license from DFS. Currently, only licensed funeral establishments, licensed cemetery companies or licensed direct disposers are authorized to sell preneed contracts.³²

A monument establishment is required to obtain a license if the establishment wants to sell monuments on a preneed basis. Current law requires registration with DFS for all persons or establishments selling contracts or merchandise on a preneed basis unless the person is a licensed funeral director. Thus, the bill's licensing requirement for monument establishments conforms their licensing requirement to the licensing requirement for other businesses selling contracts or merchandise on a preneed basis.

The bill changes the approving entity from the board within DFS to the licensing authority. The bill contains reasons why a contract would not be approved for use.

The bill sets financial requirements applicable to all monument establishments applying for a preneed sales license. A monument establishment must have a minimum net worth of \$10,000 when a license to sell preneed contracts is issued and must maintain this net worth annually. The bill's minimum net worth requirement for monument establishments is different than the current minimum net worth requirement for other entities applying for or renewing a certificate of authority to sell preneed contracts.

A monument establishment must submit a recent year-end financial statement to prove net worth at renewal. The financial statement must be prepared in accordance with generally accepted accounting principals.

³² s. 497.405(3), F.S. (2003)

If the monument establishment applicant does not have the \$10,000 net worth required, then the establishment may submit additional financial information. An administrative rule requires DFS to request additional financial information for issuance or renewal of a certificate of authority for all other entities not meeting the net worth requirement.³³

The bill also allows monument establishments not meeting the financial requirements for an initial application for preneed sales license to submit additional evidence to the licensing authority or to agree to additional oversight as a condition of receiving or retaining a license. The bill specifies what additional evidence may be submitted in these circumstances or what additional oversight is required. Currently, other entities applying for issuance or renewal of a certificate of authority can submit the same information or agree to the additional oversight; however, the allowance for other entities is found in an administrative rule, not the Florida Statutes.³⁴

There is no renewal fee set in current law for monument establishments selling preneed contracts because monument establishments are not authorized to sell these contracts. Under current law, funeral establishments, cemetery companies, or direct disposal establishments who have a certificate of authority to sell preneed contracts pay a renewal fee of \$300 - \$18,500, depending on the number of preneed contract sales during the preceding year. Thus, the renewal fees for monument establishments are different than the renewal fees for other preneed sellers.

Under current law, monument establishments can only sell monuments. In order to do so, the monument establishment must be registered and pay a \$200 registration fee. Accordingly, the bill requires monument establishments wanting to sell preneed contracts to pay additional initial application fees and renewal fees in order to sell preneed need contracts.

The bill prohibits persons without a certificate of authority to sell preneed contracts from advertising to sell or making arrangements to sell a preneed contract or services, merchandise or burial rights. Currently, the law only prohibits persons without a certificate of authority from selling preneed contracts and from selling services, merchandise or burial rights on a preneed basis. Thus, the bill adds an additional prohibition.

The bill requires preneed sales contracts to include language notifying the purchaser of his/her right to a full refund within 30 days after the date of the execution of the contract, except for amounts allocated to burial rights, merchandise or services already used by the purchaser at the time the refund is requested. Under current law, purchasers are entitled to a refund within 30 days except for purchased items already used. Thus, the bill requires language stating current law be put into the preneed sales contract.

Absent a written extension for delivery, the bill provides failure of a preneed seller to deliver a monument within 180 days of interment is a breach of contract by the preneed seller. When such a breach occurs, the purchaser must provide the preneed seller a written request for refund in order for the purchaser to receive a complete refund. Upon receipt of a written request for refund by a purchaser, the preneed seller must give the purchaser a complete refund of all monies paid within 30 days. If the preneed seller breaches the preneed sales contract by failing to timely deliver the purchased goods, the purchaser can purchase a new monument from another monument establishment or preneed seller and have it installed. Current law does not contain any breach of contract provisions relating to preneed sales or remedy to the purchaser for a breach of contract.

³³ Rule 69K-5.0016(2), F.A.C.

³⁴ Rule 69K-5.0016(5), F.A.C.

Unclaimed Bodies

The bill provides prioritization of more than one request by a legally authorized person for a claim of a body for interment. The bill defines "unclaimed" for use in Ch. 406.

Death of Indigents

The bill allows indigent relatives of a decedent to claim the body and provides the manner in which the claim should be made and reported. The bill defines "indigent" for use in Ch. 406.

C. SECTION DIRECTORY:

Section 1. Creates new "Part I" of Chapter 497, entitled "General Provisions."

Section 2. Amends 497.001 to change the short title of Chapter 497 to "Florida Funeral, Cemetery, And Consumer Services Act."

Section 3. Amends 497.002, statement of purpose and intent of Chapter 497, by combining the existing statements of purpose and intent for chapters 497 and 470.

Section 4. Creates 497.0021, explaining the relationship of part I of Chapter 497, to parts II thru VI of Chapter 497.

Section 5. Amends 497.005, Definitions, in accordance with existing HB 323, and with the following additional terms defined as agreed to by the industry and the Department: control; license; licensee; principal.

Section 6. Amends 497.101, to create the new Board Of Funeral, Cemetery, And Consumer Services, using language as currently set forth in HB 323 with one change in the last sentence of subsection (2), requested by industry and agreed to by the Department, that "There shall not be two or more Board members who are directors, employees, partners, shareholders or members of the same company or partnership, or group of companies or partnership's under common control."

Section 7. Transfers and amends 497.103; sets out in detail the division of responsibility and authority between the Board and the Department of Financial Services. The Department and the Board each have their own rulemaking authority. The Board issues final orders regarding its decisions. The Board will have authority regarding issuance and renewal of licenses, setting fees, determining continuing education requirements, determining probable cause for disciplinary action, determining final disciplinary action, etc. The Department will have authority regarding investigations, compliance examinations, inspections, administration, and regulation of unlicensed activity. The Board will give careful review and substantial weight to the recommendations of the Department, and will explain with specificity its reasons for rejecting Department recommendations. The CFO may make recommendations to the Board which the Board must vote on, and which, unless rejected by a vote of 70 percent of the Board members voting, will be binding on the Board. The CFO's recommendations may be in regard to one or more of the following matters: protecting the public from any significant and discernible harm or damage; preventing the unreasonable restriction of competition for the availability of professional services in the state or in a significant part of the state; or preventing the unnecessary increase in cost of professional services without a corresponding or equivalent public benefit. The section provides for a tolling of the deemed application approval period under 120.60 in certain circumstances. The Board and the Department each have standing to institute proceedings against the other for the enforcement of the division of authority and responsibility under the section.

Section 8. Transfers to Part I present section 497.107, providing that the Board may be contacted through the Department.

Section 9. Amends section 497.525, establishing general procedures regarding fees and penalties. Provides that the Board by rule sets fees to cover cost of regulation. Provides that at least every two years the Department will provide the Board with written expense and revenue estimates which the

Board shall use to determine whether fees need to be adjusted up or down. Incorporates provisions from existing 455.219 and 455.2281.

Section 10. Creates section 497.141, incorporating provisions from 455.213 and 455.212. regarding general licensing procedures. Identifies information that may be routinely requested as part of a licensure application; provides that the Board may refuse to rule on any application for license where the applicant is under investigation or prosecution in another jurisdiction, until the investigation or prosecution is completed.

Section 11. Creates section 497.142, providing administrative procedures and authority regarding fingerprinting and criminal background checks of applicants for licenses. Provides that FDLE may accept and process fingerprints from applicant's under Chapter 497, and provide criminal history information to the Board and the Department.

Section 12. Creates section 497.143, incorporating the provisions of 455.214, allowing limited licensure of retired professionals to provide services to critical need populations of this state, including underserved and indigent populations, as may be authorized by the Board in its rules.

Section 13. Creates section 497.144, regarding general administrative provisions regarding licensure examinations. Incorporates provisions from 455.217, 455.229 (2), 455.11(2), and 455.217(6).

Section 14. Creates section 497.145, authorizing the Department to use professional testing services when available and approved by the Board. Incorporates provisions of 455.2171.

Section 15. Creates section 497.146, incorporating provisions from 455.275, regarding requirements on licensees to keep the Department notified of changes in their address.

Section 16. Creates section 497.147, providing general administrative provisions regarding continuing education of licensees. Incorporates provisions from 455.213, 455.2123, and 455.2124.

Section 17. Creates section 497.148, incorporating provisions of 455.2177, regarding establishment of systems to monitor licensee compliance with training and continuing education requirements established by the Board.

Section 18. Creates section 497.149, providing and specifying authority of the Department regarding investigations, inspections, and hearings.

Section 19. Creates section 497.150, providing and specifying authority of the Department regarding conducting financial and compliance examinations of licenses.

Section 20. Creates section 497.151, establishing requirements that licensees maintain sequential complaint logs showing name of complainant and date of complaint, and also copies of written complaints received.

Section 21. Creates section 497.152, listing grounds for disciplinary action.

Section 22. Creates section 497.153, establishing disciplinary procedures and penalties. Provides that all disciplinary cases must go through a board probable cause panel. Provides that cases can be disposed of by the probable cause panel by letter of guidance, with the Department's concurrence. Provides that the Department conducts all prosecutions, and then presents the cases to the Board for final disciplinary action. Provides for disciplinary final action ranging from a written reprimand, to permanent revocation of licensure. Provides that the Board may order payment by disciplined licensees all the costs of investigation and prosecution. Provides that the Board may order appropriate restitution by disciplined licensees. Provides that a failure by a licensee to comply with a disciplinary final order is grounds for summary suspension of licensure after seven days written notice to the licensee. Provides that a licensee is responsible for the actions of its agents and employees, but provides discretion in the Board to take action against subsidiary licensees when more appropriate. Provides that the Department may publish notice of disciplinary action taken.

Section 23. Transfers and renumbers has 497.154, present section 497.133, requiring the establishment by Board rule of guidelines concerning disciplinary penalties for various types of offenses.

Section 24. Transfers, amends, and renumbers as 497.155, present section 497.121, regarding disposition of certain violations by citation or other action. Provides that the Board by rule shall specify violations where there is no significant consumer harm, which may be disposed of by the Department by issuance of a citation. Also provides that the Board may by rule establish criteria for identification of minor violations, which, if corrected by the licensee promptly upon notice by the Department, may result in closure of the file by the department and board without further action, subject to limitations established by rule on the number of times such a resolution may be utilized in regard to anyone licensee.

Section 25. Creates section 497.156, authorizing emergency action by the Department against licensees.

Section 26. Creates section 497.157, providing and specifying authority in the Department to investigate and take action concerning unlicensed activity which violates Chapter 497.

Section 27. Transfers, amends, and renumbers existing 497.229 as 497.158, establishing and specifying Department authority to seek judicial enforcement of the Chapter, where necessary, concerning persons violating the Chapter.

Section 28. Creates section 497.159, incorporating criminal violations specified in present sections 455.232, 455.2175, 455.2275, 497.519, 497.341, and 470.023.

Section 29. Transfers, amends, and renumbers existing 497.437 as 497.160, regarding receivership proceedings. Provides that the Department, with Board approval, may petition the circuit courts of this state for the appointment of receiver of any current or former licensee, or person engaging without license in activities requiring a license.

Section 30. Creates section 497.161, providing additional rulemaking authority to the Board and the Department regarding various topics.

Section 31. Transfers section 470.0201 and renumbers same as 497.162, regarding health and safety education for unlicensed staff of licensees.

Section 32. Creates section 497.163, incorporating provisions from 455.10, limiting disqualification for licensure based on citizenship.

Section 33. Transferring, amending, and renumbering present section 497.321 as 497.164, regarding authority of the Board to promulgate rules regulating the solicitation of funeral and burial merchandise and services.

Section 34. Transferring, amending, and renumbering present 497.025 as 497.165, regarding the liability of principals of licensees for trust fund deficits.

Section 35. Creating 497.166, regarding relationship of part I, general provisions, to part IV, preneed sales; providing that a funeral director or direct disposer in charge of an establishment is responsible for the control and activities of the establishment's preneed sales agents.

Section 36. Creating section 497.167, regarding various administrative matters.

Section 37. Creating section 497.168, incorporating provisions from 455.02 regarding licensees called to active duty in the U.S. Armed Forces.

Section 38. Transferring, amending, and renumbering existing 497.527 as 497.169, regarding civil actions based upon violation of the provisions of Chapter 497.

Section 39. Transferring and renumbering present 497.531 as 497.170, regarding the prohibition on unauthorized arrangements for payment of burial or funeral merchandise or services.

Section 40. Establishing part II of Chapter 497, regarding cemetery regulation.

Section 41. Transferring, amending, and renumbering present section 497.003 as 497.260, regarding cemeteries which are exempt from regulation under chapter 497.

Section 42. Transferring and renumbering existing 497.004 as 497.261, regarding effect of the chapter on existing cemetery companies.

Section 43. Transferring, amending, and renumbering present 497.0255 as 497.262, regarding the duty of care and maintenance of licensed cemeteries.

Section 44. Transferring, amending, and renumbering present 497.201, as 497.263, regarding procedures and criteria for application for cemetery license.

Section 45. Transferring, amending, and renumbering present 497.205 as 497.264, providing that cemetery licenses are not assignable or transferable without approval by the Board, and establishing procedures and criteria obtaining such approval.

Section 46. Transferring, and renumbering present 497.213 as 497.265, regarding annual license fees for licensed cemeteries.

Section 47. Transferring, amending, and renumbering present section 497.237 as 497.266, regarding requirements for care and maintenance trust funds for licensed cemeteries.

Section 48. Transferring and renumbering present 497.241 as 497.267, regarding disposition of income from care and maintenance trust funds.

Section 49. Transferring and renumbering present 497.245 as 497.268, regarding required amounts to be deposited into the care and maintenance trust fund.

Section 50. Transferring, amending, and renumbering present 497.249 as 497.269, regarding financial reports required to be submitted by the trustee of the care and maintenance trust fund.

Section 51. Transferring, amending, and renumbering present 497.253 as 497.270, regarding minimum acreage for licensed cemeteries, and providing procedures and criteria for obtaining Board approval for the sale or disposition of cemetery lands.

Section 52. Transferring and renumbering present 497.255 as 497.271, regarding standards for construction and alteration or renovation of mausoleums and columbaria.

Section 53. Transferring and renumbering present section 497.257 as section 497.272, regarding requirements for financial security of consumer payments regarding preconstruction sales of interment spaces in mausoleums etc..

Section 54. Transferring and renumbering present section 497.305 as section 497.273, regarding authorized functions of cemetery companies.

Section 55. Creating section 497.274, establishing minimum grave space measurements of 42 inches by 96 inches. Establishing 12 in. minimum required soil depth on top of grave space at time of interment. Providing requirements for mapping and survey markers in cemeteries. Providing for the grandfathering of existing grave spaces.

Section 56. Transferring and renumbering existing section 497.309 as section 497.276, regarding records that must be maintained by cemeteries.

Section 57. Transferring and renumbering section 497.313 as section 497.277, regarding fees which may be charged by licensed cemeteries.

Section 58. Transferring and renumbering present section 497.317 as section 497.278, providing limitations on cemetery companies charging fees for installation of monuments by other persons or firms.

Section 59. Transferring, amending, and renumbering present section 497.321 as 497.279, regarding authority of the Board to establish rules regulating solicitation of funeral and burial merchandise and services.

- Section 60. Transferring and renumbering present section 497.325 as section 497.280, regarding prohibitions and limitations on illegal tying arrangements.
- Section 61. Transferring, amending, and renumbering present section 497.329 as section 497.281, regarding requirement for licensure of brokers of burial rights.
- Section 62. Transferring, amending, and renumbering present section 497.333 as section 497.282, regarding certain required disclosures of information to the public. Requiring cemetery licensees to make available in their offices informational brochures for customers and prospective customers; providing the Board with authority to determine required content of such informational brochures.
- Section 63. Transferring, amending, and renumbering present section 497.337 as section 497.283, regarding limitations on certain sales by cemetery companies of personal property or services.
- Section 64. Transferring and renumbering present section 497.345 as section 497.284, regarding abandoned cemeteries.
- Section 65. Transferring and renumbering present section 497.349 as section 497.285, regarding inactive licensed cemeteries.
- Section 66. Transferring and renumbering present section 497.253 as section 497.286, regarding presumed abandonment by consumers of previously purchased burial rights.
- Section 67. Transferring, amending, and renumbering present section 497.357 as section 497.287, regarding reports concerning cemeteries exempt from regulation under Chapter 497.
- Section 68. Creating part III of Chapter 497, entitled "Funeral Directing, Embalming, And Related Services."
- Section 69. Creating section 497.365, incorporating provisions from 455.271, regarding licensure status as active, inactive, or delinquent.
- Section 70. Creating section 497.366, incorporating provisions from 455.273, regarding procedures for license renewal and cancellation.
- Section 71. Creating section 497.367, incorporating provisions of section 455.2226, regarding required instruction on HIV and AIDS.
- Section 72. Transferring, amending, and renumbering present section 470.006 as section 497.368, regarding licensure of embalmers by examination, and provisional licensing of embalmer interns.
- Section 73. Transferring, amending, and renumbering present section 470.007 as section 497.369, regarding licensure of embalmers by endorsement, and temporary licensure of embalmers waiting to take their examination.
- Section 74. Transferring, amending, and renumbering present section 470.008 as section 497.370, regarding licensure of embalmer interns.
- Section 75. Transferring, amending, and renumbering present section 470.0085 as section 497.371, regarding establishment of embalmer apprentice program.
- Section 76. Transferring and renumbering present section 470.0087 as section 497.372, regarding specification of conduct constituting funeral directing.
- Section 77. Transferring and renumbering present section 470.009 as section 497.373, regarding licensure by examination of funeral director applicants, and provisional licensure of persons waiting to take the funeral director examination.
- Section 78. Transferring and renumbering present section 470.011 as section 497.374, regarding licensure as a funeral director by endorsement, and regarding temporary licensure of persons seeking funeral director licensure by endorsement but awaiting the required examination.
- Section 79. Transferring and renumbering present section 470.012 as section 497.375, regarding licensure of funeral director interns.

Section 80. Transferring and renumbering present section 470.013 as section 497.376, regarding combined licensure as funeral director and embalmer, and requiring display of license at business premises.

Section 81. Transferring and renumbering present section 470.014 as section 497.377, regarding concurrent internships for embalmer and funeral director licensure.

Section 82. Transferring and renumbering present section 470.015 as section 497.378 regarding renewal of funeral director and embalmer licenses.

Section 83. Transferring and renumbering section 470.016 as section 497.379, regarding inactive status of funeral director or embalmer licenses.

Section 84. Transferring and renumbering present section 470.024 as section 497.380, regarding licensure of funeral establishments.

Section 85. Transferring and renumbering present section 470.026 as section 497.381, authorizing the Board to adopt rules regulating solicitation of funeral or burial merchandise or services.

Section 86. Transferring, amending, and renumbering present section 470.209 as section 497.382, regarding required reports by funeral establishments etc. of bodies embalmed or otherwise processed.

Section 87. Transferring and renumbering present section 470.0294 as section 497.383, regarding rights to authorize disposal of fetal remains.

Section 88. Transferring and renumbering present section 470.0295 as section 497.384, regarding required authorization and notification for disinterment or transportation of human remains.

Section 89. Transferring, amending, and renumbering present section 470.0301 as section 497.385, regarding licensure of removal services, refrigeration facilities, and centralized embalming facilities.

Section 90. Transferring, amending, and renumbering present section 470.0315 as section 497.386, regarding requirements for transportation, storage, and preservation of human remains.

Section 91. Transferring, amending, and renumbering present section 470.032 as section 497.387, prohibiting unlawful removal or embalming of bodies without proper authorization from authorities, when criminal conduct in the death is suspected.

Section 92. Transferring, amending, and renumbering present section 470.0355 as section 497.388, establishing requirements for identification of human remains.

Section 93. Transferring and renumbering present section 470.0375 as section 497.389 authorizing certain escrow refund accounts and cash advance accounts.

Section 94. Transferring, amending, and renumbering present section 470.038 as section 497.390, authorizing licensing reciprocity agreements with other states.

Section 95. Transferring, amending, and renumbering present section 470.039 as section 497.391, specifying legislative intent regarding certain sales of funeral or burial merchandise, and regarding written instructions of a person concerning disposition of their body.

Section 96. Transferring, amending, and renumbering present section 470.0395 as section 497.392, regarding grandfathering in of certain branch chapels.

Section 97. Creating "Part IV" of Chapter 497, entitled "Preneed Sales."

Section 98. Transferring and renumbering present section 497.401 as section 497.450, regarding exemption of preneed sales from Florida Insurance Code.

Section 99. Transferring and renumbering present section 497.403 as section 497.451, prohibiting conduct of insurance business by preneed licensees.

Section 100. Transferring, amending, and renumbering present section 497.405 as section 497.452, requiring preneed licensure in order to sell preneed contracts; providing that monument establishments may obtain preneed licensure.

Section 101. Transferring, amending, and renumbering present section 497.407 as section 497.453, establishing procedures and criteria for obtaining preneed licensure, and procedures and criteria for obtaining approval of board for change in control of licensee, and establishing fees for issuance and renewal of preneed license.

Section 102. Transferring, amending, and renumbering present section 497.409 as section 497.454, regarding approval of preneed contracts forms and related forms; establishing criteria for approval or disapproval of such forms.

Section 103. Transferring, amending, and renumbering present section 497.411 as section 497.455, regarding nonconforming preneed contracts.

Section 104. Transferring, amending, and renumbering present section 497.413 as section 497.456, regarding the Preneed Funeral Contract Consumer Protection Trust Fund.

Section 105. Transferring, amending, and renumbering present 497.415 as section 497.457, regarding ownership of proceeds received on preneed contracts.

Section 106. Transferring, amending, and renumbering present section 497.417 as section 497.458, regarding disposition of proceeds received on preneed contracts.

Section 107. Transferring, amending, and renumbering present 497.419 as section 497.459, regarding cancellation of, or default on, preneed contracts.

Section 108. Transferring, amending, and renumbering present 497.421 as section 497.460, regarding payment of funds upon death of named beneficiary.

Section 109. Transferring, amending, and renumbering present section 497.423 as section 497.461, regarding surety bonding as an alternative to trust deposits for preneed sales.

Section 110. Transferring, amending, and renumbering present section 497.425 as section 497.462, regarding other alternatives to trust deposits in the sale of preneed contracts.

Section 111. Transferring, amending, and renumbering present section 497.427 as section 497.463, regarding required documentation as a prerequisite to use of alternatives to trust deposits for preneed sales.

Section 112. Transferring, amending, and renumbering present section 497.429 as section 497.464, authorizing and establishing requirements for alternative preneed contracts.

Section 113. Transferring, amending, and renumbering present section 497.436 as section 497.465, regarding surrendered, inactive, or revoked preneed licenses.

Section 114. Transferring, amending, and renumbering present section 497.439 as section 497.466, regarding licensure of preneed sales agents.

Section 115. Transferring, amending, and renumbering present section 497.441 as section 497.467, regarding requirement that seller verify acceptability of merchandise in the purchaser's cemetery of choice.

Section 116. Creating "Part V" of Chapter 497, entitled "Monument Establishments."

Section 117. Transferring, amending, and renumbering present section 497.361 as section 497.550, requiring licensure of monument establishments, and establishing procedures and criteria for such licensure.

Section 118. Creating section 497.551, establishing requirements for biennial renewal of monument establishment's licenses.

Section 119. Creating section 497.552, specifying required facilities for monument establishments.

Section 120. Creating section 497.553, establishing regulatory requirements for monument establishments.

Section 121. Creating section 497.554, establishing requirements for licensure of sales representatives of monument establishments.

Section 122. Creating section 497.550, requiring adoption of rules by the board establishing minimum standards of access to all cemeteries, by licensed monument establishments, for the delivery and installation of markers and monuments.

Section 123. Creating section 497.556, establishing additional requirements for preneed licensure regarding monument establishments.

Section 124. Creating "Part VI" of Chapter 497, entitled "Cremation, Crematories, and Direct Disposition."

Section 125. Transferring and renumbering present section 470.0165 as section 497.601, regarding authorized activities by direct disposers.

Section 126. Transferring, amending, and renumbering present section 470.017 as section 497.602, requiring licensure of direct disposers, and establishing procedures and criteria for such licensure, and establishing requirements for display of license.

Section 127. Transferring, amending, and renumbering present section 470.018 as section 497.603, regarding renewal of direct disposer licenses.

Section 128. Transferring, amending, and renumbering present section 470.021, as section 497.604, requiring licensure of direct disposal establishments, and providing procedures and criteria for such licensure, and establishing requirements for renewal, and directing and authorizing other regulation of direct disposal establishments.

Section 129. Transferring and renumbering present 470.022 as section 497.605, regarding the relationship of direct disposition to funeral directing.

Section 130. Transferring, amending, and renumbering present 470.025, as section 497.606, requiring licensure all of cinerator facilities, and establishing procedures and requirements for such licensure, and establishing requirements for renewal of licensure, and directing and authorizing other regulation of cinerator facilities.

Section 131. Creating section 497.607, regarding procedure required for cremation.

Section 132. Creating section 497.608, regarding liability for unintentional commingling of the residue of the cremation process.

Section 133. Amending section 20.121 to eliminate the Board of Funeral and Cemetery Services from the Division of Consumer Services of the Department of Financial Services; and establishing the Division of Funeral, Cemetery And Consumer Services within the Department of Financial Services; and establishing that the Department of Financial Services shall include the Board of Funeral, Cemetery, and Consumer Services.

Section 134. Amending section 20.165, deleting from within the Department of Business and Professional Regulation the Board of Funeral Directors and Embalmers.

Section 135. Amending section 316.1974, regarding definitions.

Section 136. Amending section 381.0098, regarding definitions.

Section 137. Amending section 382.002, regarding definitions

Section 138. Amending section 403.703, regarding definitions.

Section 139. Amending section 406.02, making conforming changes.

Section 140. Amending 406.50, regarding unclaimed bodies.

Section 141. Amending 406.52, making conforming changes.

Section 142. Amending s. 406.53, regarding death of indigents.

Section 143. Amending s. 455.2226, making conforming changes.

Section 144. Amending s. 501.022, making conforming changes.

Section 145. Amending 501.604, making conforming changes.

Section 146. Amending section 626.785, making conforming changes.

Section 147. Amending s. 765.519, making conforming changes.

Section 148. Providing for a Type II transfer from the Department of Business and Professional Regulation to the Department of Financial Services; and from the Board of Funeral and Cemetery Services to the Board of Funeral, Cemetery, and Consumer Services and the Department of Financial Services.

Section 149. Preserving the validity of judicial and administrative actions pending on the effective date of the act.

Section 150. Preserving the validity of orders of the Board of Funeral and Cemetery Services, the Board of Funeral Directors and Embalmers, and the Department of Business and Professional Regulation, prior to the effective date of the act.

Section 151. Providing that the applicable rules of the Board of Funeral Directors and Embalmers, the Department of Business and Professional Regulation, and the Board of Funeral and Cemetery Services, shall become the rules of the Board of Funeral, Cemetery, and Consumer Services and the Department of Financial Services, as of the effective date of the act.

Section 152. Preserving the validity of licenses, registrations, and certificates of authority, issued under chapter 470 and 497, in good standing as of the effective date of the act.

Section 153. Providing a statement of legislative content regarding the need to conform the Florida Statutes to the policy decisions reflected in the provisions of the act and authorizing the Division of statutory revision to provide relevant committees of the Legislature with assistance upon request in that regard, etc.

Section 154. Providing for the abolishment of the Board of Funeral and Cemetery Services and the Board of Funeral Directors and Embalmers as of 11:59 PM on September 30, 2005.

Section 155. Repealing specified sections of present chapters 497 and 470, which sections are duplicative or were rendered superfluous due to consolidation.

Section 156. Establishing that except as expressly provided otherwise by the act, the act shall take effect October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FISCAL IMPACT ON DBPR

REVENUE			
	FY 2004-05 Amount	FY 2005-06 Amount	FY 2006-07 Amount
License Fees:	(\$842,895)	(\$842,895)	(\$842,895)
Taxes:			
Fines, Misc.	(\$10,285)	(\$10,285)	(\$10,285)
TOTAL:	(\$853,180)	(\$853,180)	(\$853,180)

This negative impact is the result of the abolishment of the current board within DBPR and the transfer of the functions and funds of the current board within DBPR to DFS for use by the new board created by the bill. According to DBPR, the agency currently licenses and regulates approximately 5,000 individuals and establishments engaged in funeral related services.³⁵

FISCAL IMPACT ON DFS

There will be revenues to DFS associated with the implementation of the bill; however, the amount of revenue is uncertain. Revenue will consist of licensing fees, renewal fees, fines, settlement monies, etc. The revenue to DFS will be more than the lost revenue to DBPR because DBPR’s revenue is generated from regulation of funeral directors, cinerator facilities and direct disposers. DFS’s revenue will be generated from regulation of funeral directors, cinerator facilities, direct disposers, monument establishments, cemeteries, and preneed contract sellers. Currently, approximately 5,000 individuals and facilities are licensed and regulated by DBPR and 3,024 individuals and facilities are licensed by DFS.³⁶

DFS should collect more licensing fees than it presently collects due to the bill’s authorization for monument establishments to sell preneed contracts. DFS will collect fees associated with the issuance and renewal of licenses to sell preneed contracts to monument establishments. The amount of fees collected will depend on the number of licenses issued and renewed. Although this number is uncertain, the amount collected is \$500 per certificate issuance and a range of \$500-\$1,250 per license for renewal. The renewal fee per license is uncertain because it is based on a monument establishment’s total retail value of all outstanding preneed contracts and this amount will vary from year to year.

The bill’s authorization for monument establishment to sell preneed contracts should allow DFS to collect additional monies for placement into its Preneed Funeral Contract Consumer Protection Trust Fund (trust fund). For each preneed contract sold, the seller has to remit \$2.50 to \$10.00 to the trust fund, depending on the purchase price of the preneed contract sold. Under the bill, there should be an increase in the sales of preneed contracts because the bill allows more entities to sell preneed contracts. An increase in sales will result in an increase in the trust fund amount. The trust fund is used to provide restitution to preneed contract purchasers due to a preneed contract seller’s failure to provide the benefits of a preneed contract or failure to refund the appropriate money if a preneed contract is cancelled by the purchaser.

According to DFS, current licensing fees may need to be increased to meet the operating expenses of the new division because the death care regulation program is self-funded. In order to determine whether an increase is needed, DFS has indicated it will conduct an analysis of the expenditures of the program 6 months after enactment of the bill.³⁷

2. Expenditures:

FISCAL IMPACT ON DBPR

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Non-Recurring Expenditures	FY 2004-05	FY 2005-06	FY 2006-07

³⁵ Legislative Bill Analysis from DBPR.

³⁶ Legislative Bill Analysis of DBPR, Funeral and Cemetery Services Statistics from DFS’ website.

³⁷ Legislative Bill Analysis of DFS.

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
	Amount	Amount	Amount
Other Personal Services	0	0	0
Other (identify)			
Subtotal	0	0	0

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Recurring Expenditures	FY 2004-05 Amount	FY 2005-06 Amount	FY 2006-07 Amount
Salaries/Benefits	(\$68,402)	(\$68,402)	(\$68,402)
# of FTE's	(2.00)	(2.00)	(2.00)
Other Personal Services	(\$5,250)	(\$5,250)	(\$5,250)
Expenses	(\$21,566)	(\$21,566)	(\$21,566)
Service Operations (Double Budget)	(\$100,000)	(\$100,000)	(\$100,000)
Unlicensed Activities	(\$5,000)	(\$5,000)	(\$5,000)
Other Data Processing Services – IT	(\$24,855)	(\$24,855)	(\$24,855)
Attorney General Contract	(\$31,000)	(\$31,000)	(\$31,000)
Subtotal	(\$256,073)	(\$256,073)	(\$256,073)

DBPR provided the following explanation of the recurring expenditure chart:³⁸

Professional Regulation Program: One FTE Environmental Health Specialist position with a salary of \$35,133 and \$3,305 in expenses related to this position would be deleted by the bill. Staff positions do not devote all of their time solely to the funeral profession. The staff workload varies due to the unpredictable nature of complaints. Each employee's duties involve multiple professions and costs are allocated to the various professions based on timekeeping data. The direct costs related to the board office are \$5,250 in Other Personal Services and \$14,956 in Expenses.³⁹ In addition, the following categories could be reduced: Unlicensed Activities (\$5,000), Service Operations (\$100,000), and Attorney General Contract (\$31,000).

Service Operation Program: This program supports the Board of Funeral Directors and Embalmers by providing services through the Customer Contact Center (CCC), Central Intake, and Testing & Continuing Education service entities. DBPR anticipates cutting 1 FTE, a Regulatory Specialist, with a salary of \$33,268 and \$3,305 in Central Intake under this proposed legislation.

Information Technology Service Entity: A decrease of \$24,855 in the Other Data Processing category.

³⁸ Legislative Analysis of DBPR.

³⁹ Per telephone discussion with Robert W. Sloyer, Jr., Sr. Management Analyst II, DBPR on March 2, 2004, expenses include: per diem and travel expenses of board members, expenses associated with holding board meetings, publication expenses, and postage.

Non-Operating Expenditures	FY 2004-05 Amount	FY 2005-06 Amount	FY 2006-07 Amount
Service Charge to G R	(\$67,000)	(\$47,000)	(\$67,000)
Transfer to Admin T F	(\$37,800)	(\$37,800)	(\$37,800)
Subtotal	(\$104,800)	(\$84,800)	(\$104,800)

DBPR provided the following explanation of the non-operating expenditures chart:⁴⁰

Non-Operating Expenditures: The Service Charge to General Revenue expenditure is dependent on the amount of revenue collected each year.⁴¹ Due to the biennial renewals for the professions currently regulated by DBPR, the amount will vary each year. During a two year cycle the amount will average \$57,000 per year. The transfer to the Administrative Trust Fund varies each year, according to the workload allocation methodology.⁴²

FISCAL IMPACT ON DFS

The bill moves the regulation of chapter 470, F.S. from DBPR to DFS by means of a type-two transfer. Accordingly, the following expenditure chart is based upon the assumption that all resources used by DBPR to implement and enforce chapter 470, F.S. will be transferred to DFS. This includes all funds, budget, cash, equipment, records, files, and personnel.⁴³

	FY 2004-05 Amount	FY 2005-06 Amount	FY 2006-07 Amount
Recurring Expenditures/DFS 10 FTEs ⁴⁴	\$602,395	\$570,682	\$584,997
Recurring Expenditures/DFS 2 FTEs transferred from DBPR	\$256,073	\$258,125	\$260,239
Non-recurring Expenses	\$30,610	0	0
OCO	\$15,000	0	0

Because the bill requires the creation of a new division, DFS anticipates 10 FTEs in addition to the 2 FTEs to be transferred to DFS by DBPR. These positions are as follows: Division Director, Financial Administrator, Management Analyst I, Administrative Assistant III, and an Accountant II. DFS also anticipates hiring a Financial Specialist, 2 Financial Examiners I and 2 Financial Examiners II to develop and implement a monument establishment inspection program and to conduct inspections.⁴⁵

The recurring expenditures to DFS in the chart above are the salary and benefit amounts for the 10 positions needed as a result of the bill. The legislation will move the regulation of approximately 1,000 funeral establishments and establish new regulation for 120 monument companies throughout the state

⁴⁰ Legislative Analysis of DBPR.

⁴¹ The service charge is 7.3 percent of all revenue collected.

⁴² A transfer from the Professional Regulation Trust Fund to the Administrative Trust Fund is required to fund operations, such as legal services, for the specific Board needing the services.

⁴³ i.e. professional staff, clerical staff, investigators, attorneys, inspectors, analysts, etc.

⁴⁴ Legislative Fiscal Note from DFS; includes Salaries & Benefits, Expenses, Travel Expenses/Reimbursement, and Other Capital Outlay (OCO).

⁴⁵ Legislative Bill Analysis from DFS.

to DFS which will require annual inspections and licensing support. It is assumed sufficient personnel will be transferred from DBPR to DFS for the regulation of funeral establishments, embalmers, and crematories. According to DFS, staffing needs will be reevaluated in 2005 when the bill is implemented.

According to DFS, some cost savings will evolve due to the merger of the two boards, but it will be minimal.⁴⁶

DFS will incur expenses associated with rulemaking required by the bill.

Board members of the new board created by the bill will have to be selected and trained because there is no provision in the bill for transition of current board members to the new board. Thus, the DFS will incur an expense associated with training the new board members.⁴⁷

DFS will incur expenses associated with compensation for per diem and travel for members of the new board. The amount of these expenses will depend on the number and location of the meetings. A meeting schedule has not been set yet because the new board has not been created yet.

DFS will incur expenses associated with preparation for the transition and establishment of the new board. The transition will require a transfer of the licensing data, files, furniture, personnel, trust fund balances, and databases from DBPR to DFS. All pending legal cases, inspection, and investigation cases pending in DBPR will also be transferred to the DFS. Information must be disseminated to the existing registrants, licensees, certificate of authority holders, and the public about the transfer. Application forms, examination, inspection procedures and rules must be revised or promulgated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some direct disposal facilities may incur expenses associated with renovating their existing direct disposal facilities to comply with the bill's requirement that the facility be a minimum of 625 interior contiguous square feet. The current square footage requirement is 625 square feet and some facilities may have 625 square feet, but not 625 interior contiguous square feet.

Some cinerator facilities may incur expenses associated with establishing and drafting written procedures for the removal of remains after cremation. Although the cost of establishing written procedures is unknown and will vary among facilities, the cost should be nominal.

Some funeral establishments may incur expenses associated with establishing a preparation room in the establishment for embalming dead human bodies. Current law does not require a preparation room, although some funeral establishments may already have one in their facility.

Funeral directors, embalmers, and direct disposers will incur an expense of purchasing additional identification tags to be put in the casket, other burial container, or cremation container. Identification

⁴⁶ Legislative Bill Analysis from DFS.

⁴⁷ Legislative Bill Analysis from DFS.

tags for placement on the outside of the burial container will also have to be purchased because no tags are currently required for the outside of burial or cremation containers. DFS estimates this expense to be \$6,500 for the industry.⁴⁸

Direct disposal establishments may incur expenses associated with establishing an identification system to track the identity of human remains because an identification system is not currently required by law. The cost of the identification system is unknown and will vary among establishments, but it should be nominal.

Some cemetery companies may incur expenses associated with changing their bylaws to include minimum standards for access for the installation of burial merchandise. The cost of changing the bylaws is unknown and will vary among cemetery companies, but it should be nominal. Cemetery companies already including standards for access should not incur any additional expenses.

Licensed cemetery companies will have to obtain the services of a surveyor licensed under chapter 472, F.S., to have a certified land survey of the undeveloped areas to establish the reference markers required by this bill. DFS estimates surveying and placing reference markers the required 200 feet apart will cost from \$15,000 per acre.⁴⁹

Monument establishments may incur costs associated with the bill's requirement for provision of a complete description of any gravesite monument, marker, or memorialization to the purchaser. Monument establishments are not currently required to provide such information. The cost of providing this information is unknown and will vary among monument establishments, but it should be nominal. Monument establishments already providing the information to purchasers should not incur any additional expenses.

Monument establishments wanting to sell preneed contracts will incur additional costs associated with the initial issuance of a certificate of authority to sell preneed contracts and annual renewal of the certificate. The cost of an initial certificate of authority is \$500. The annual renewal fee will range from \$500 to \$1,250, depending on the establishments total retail value of all outstanding preneed contracts.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DFS is given rulemaking authority regarding matters outlined in the bill under its control. The new board is given rulemaking authority regarding matter outlined in the bill under its control.

⁴⁸ Identification tags cost approximately 10 – 15 cents each.

⁴⁹ Legislative Bill Analysis from DFS.

The rules of the existing board within DBPR are transferred to the new board effective October 1, 2005.

The rules of the existing board within DFS are transferred to the new board effective October 1, 2005.

C. DRAFTING ISSUES OR OTHER COMMENTS:

All of the public records and public meetings exemptions were deleted from the bill by amendment adopted in April 19, 2004. These exemptions were deleted to avoid any possible constitutional problem because there was not a public records/ public meetings tied bill. Because most of the provisions of the bill do not take effect until October 1, 2005, a public records/ public meeting bill should be drafted and passed next legislative session in order to maintain the public records and public meetings exemption and current law.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 4, 2004, the Committee on Insurance adopted 13 amendments to the bill and reported it favorably with CS. The amendments to the bill:

- Provide a depository source for settlement moneys collected by DFS from litigation with regulated individuals and entities in the death care industry;
- Require members of the new board to be educated in the laws and regulations of chapter 470, F.S.;
- Make a conforming change to the definition of "cremation";
- Delete the reference to rule 10D-37.012, F.A.C.;
- Require monument sellers to provide DFS form contracts for use with preneed sales and monument sales;
- Change the bill's effective date to July 1, 2005;
- Authorize the Senate to remove members of the new board;
- Delete the authorization for the Governor to remove members of the new board;
- Delete the placement of the Bureau of Funeral and Cemetery Services from the Division of Consumer Services in DFS;
- Make conforming changes to dates throughout the bill to conform the dates to the amendment changing the effective date; and
- Require DFS to use the licensing system currently in existence at DBPR and to reimburse DBPR for such use.

On April 19, 2004, the Committee on Insurance reconsidered the bill upon re-referral by the Speaker of the House or Representatives. The Committee adopted two amendments to the bill and reported it favorably with CS. One amendment to the bill adopted was a lengthy strike-everything amendment making the following changes:

- Eliminated duplicative statutes,
- Consolidated statutes addressing the same topic,
- Eliminated inconsistencies among statutes addressing the same topic, such as grounds for discipline,
- Grouped statutes according to subject matter,
- Provided uniformity of procedure and statutory structure in statutes on similar topics, such as application for the various types of licenses,
- Renamed statutes to make it easier to discern their subject matter from their title,
- Repealed statutes rendered superfluous by the merger,
- Maintained the consumer protection provisions of the original bill,
- Maintained all the reforms regarding burial and other interments contained in the original bill, and
- Reduced government by consolidating the death care industry under one board and one state agency.

- Copied the provisions of Ch. 455 applicable to the death care industry to Ch. 497.
- Transferred some of the provisions in Ch. 455 to Ch. 497.
- Repealed provisions in Ch. 470.

The second amendment adopted by the Committee on Insurance at its April 19, 2004, meeting deleted all public records and public meetings exemptions contained in the bill.