

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 528

SPONSOR: Banking and Insurance Committee, Regulated Industries Committee, Senator Pruitt and others

SUBJECT: Funeral & Cemetery Services

DATE: April 20, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Emrich	Deffenbaugh	BI	Fav/CS
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5.				
6.				

## I. Summary:

CS for CS for SB 528 creates the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services. It establishes the composition, powers, and duties for the Board of Funeral, Cemetery and Consumer Services (new board). The new board would be composed of 10 members, who would be appointed by the governor from nominations made by the Chief Financial Officer (CFO). The new board would enforce the provisions of chs. 470 and 497, F.S., and the provisions of ch. 455, F.S., that are necessary to enforce the provisions of ch. 470, F.S.

The bill creates the Division of Funeral, Cemetery, and Consumer Services (new division) within the Department of Financial Services (DFS). The director of the new division would be appointed by, and serve at the pleasure of, the CFO. The director serves as the executive director of the new board. The director would be responsible for the preparation of the new board's agenda, the presentation of division staff recommendations, reporting the activities of the division to the new board, and performing such other duties as may be assigned by CFO.

The bill would transfer the statutory powers, duties, functions, records, personnel, property, and unexpended balances of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services to the new board.

The bill defines new terms and clarifies current terms, used in chs. 470 and 497, F.S. The bill provides standards for adult grave spaces. It requires that a licensed cemetery prepare a map documenting establishment of recoverable internal survey reference markers. It provides identification requirements for human remains interred, entombed, scattered, or otherwise placed for final rest at licensed cemeteries after October 1, 2004. The bill provides that a licensed

cemetery company may rely entirely on the identity stated on the burial transmit permit or on the identification supplied by a person licensed under ch. 470, F.S. It exempts from the 30-day refund requirement for cancelled contracts those amounts allocable to any burial rights, merchandise, or service that have been used by the purchaser. It authorizes the board to perform procedures it deems necessary incident to the surrender of a certificate of authority.

The bill increases from one to three years the period that an embalmer apprentice may serve in an apprentice capacity. The bill amends requirements relating to the practice of direct disposal. The bill establishes additional requirements for direct disposal establishments and operators of cinerators, including reporting, equipment, and business practice requirements. It provides for the direct disposal of fetal remains, including remains from fetal deaths of less than 20 weeks gestation. It increases from three to six the maximum number of classroom hours of continuing education needed for renewal of a direct disposer registration.

The bill provides for the proper identification of dead human remains in the casket, alternative container, or cremation container. It provides that all contracts with the public must be approved by the DFS and must include a complete description of any monument, marker or related product.

The bill provides for the regulation of monument establishments, and requires that they operate with a certificate of authority. It provides requirements for the operation of monument establishments, including minimum square footage requirements, and minimum net worth requirements. The bill provides for the regulation of preneed contract sales by monument establishments, including requiring a certificate of authority to conduct preneed sales.

The bill requires that multiple claims for a body must be prioritized in accordance with inheritance rules. It provides that an “unclaimed” body is one that is not claimed by a legally authorized person for interment at that person’s expense. It provides that indigent relatives may claim a body in a manner consistent with the policy of the agency in possession or control of the body, and defines the term “indigent” to mean income at or below 100 percent of the federal poverty level.

This bill amends the following sections of the Florida Statutes: 20.121, 20.165, 406.50, 406.53, 455.2226, 470.002, 470.0085, 470.018, 497.021, 470.024, 470.025, 470.0255, 470.028, 470.029, 470.031, 470.0355, 497.005, 497.101, 497.105, 497.305, 497.325, 497.333, 497.361, 497.405, 497.419, and 497.436.

This bill creates the following sections of the Florida Statutes: 497.102, 497.1021, 497.1022, 497.306, 497.307, 497.365, 497.371, 497.379, 497.385, 497.391, and 497.395.

This bill repeals the following sections of the Florida Statutes: 470.003, 497.107, and 497.109.

This bill reenacts section 470.036 of the Florida Statutes.

This bill creates unnumbered sections of the Florida Statutes.

## **II. Present Situation:**

Chapter 470, F.S., regulates funeral directors, embalming, and the practice of cremating human remains. The Board of Funeral Directors and Embalmers, which consists of five members, within the Department of Business and Professional Regulation (DBPR) administers and enforces the provisions of ch. 470, F.S. According to the DBPR, the board regulates approximately 5,000 individuals and establishments in funeral related services.

Chapter 497, F.S., is known as the Florida Funeral and Cemetery Services Act (act). The act regulates cemeteries, cremation services, cemetery companies, and preneed contracts for funeral merchandise or services. The Board of Funeral and Cemetery Services, which consists of seven members, within the Department of Financial Services (DFS) administers and enforces the provisions of the act.

### **Definitions**

Section 470.002 (7), F.S., defines a “funeral establishment” as:

[A] facility licensed under this chapter where a funeral director or embalmer practices funeral directing or embalming.

Section 470.002 (14), F.S., defines a “cinerator” as:

[A] facility where dead human bodies are reduced to a residue, including bone fragments, by direct flame, also known as “cremation,” or by intense heat, also known as “calcination.”

Section 497.005, F.S., defines a “cemetery” as:

[A] place dedicated to and used or intended to be used for the permanent interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated human remains; or any combination of one or more of such structures or places.

Section 497.005(30), F.S., defines a “preneed contract” as:

...any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.

Section 470.002(21), defines “preneed sales agent” as:

[A]ny person who is registered under chapter 497 to sell preneed burial or funeral service and merchandise contracts or direct disposition contracts in this state.

### **Licensure of cemeteries**

Section 497.405, F.S., requires a certificate of authority for a cemetery engaged in the practice of selling services, merchandise, or burial rights on a preneed basis. Cemetery companies existing before October 1, 1993, are exempt from this requirement. Also exempt, in counties with a

population of at least 960,000 persons on July 1, 1996, are sales of specified services and merchandise by religious-institution-owned cemeteries to their members and families, provided that the cemetery was engaged in the sale of preneed contracts before October 1, 1993, and maintains a positive net worth at the end of each fiscal year. According to the DFS there are 171 licensed cemeteries in Florida. According to the representative for the Funeral and Cemetery Alliance of Florida there are over 4,000 unlicensed cemeteries in Florida.

### **Registration of monument establishments**

Section 497.361, F.S., provides for the registration of monument establishments. Monument establishments must pay a \$200 registration fee and a \$150 fee biennial renewal fee. A monument establishment is defined by s. 497.005, F.S., as:

[A] facility that operates independently of a cemetery or funeral establishment and that offers to sell monuments or monument services to the public for placement in a cemetery.

### **Preneed sales**

Section 497.405, F.S., requires a certificate of authority to conduct preneed sales for services, merchandise, or burial rights. Section 497.407, F.S., requires certificateholders to annually file a statement on his or her financial condition, transactions, and affairs. The application fee for a certificate of authority is \$500. Renewal fees range from \$500 to \$18,500 depending on the number of preneed contracts that the certificateholder sells during the preceding year.

### **Background**

A joint examination by the Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Auditor General questioned the effectiveness of Department of Banking and Finance's (DBF) oversight of cemetery companies and preneed sellers, and recommended that the administration of ch. 497, F.S., be transferred to DBPR.<sup>1</sup> Specifically, OPPAGA found that DBF's examination process needed improvement, state law did not sufficiently ensure consumer protection, and the state's regulation of the death care industry was unnecessarily fragmented. OPPAGA recommended the following statutory changes:

- Amend s. 497.002, F.S., to require the department to place equal emphasis on regulating cemeteries and preneed funeral sales.
- Amend s. 497.133, F.S., to establish minimum disciplinary actions for the most serious violations of the law.
- Amend s. 497.119, Florida Statutes, to designate which violations are intended to be mediation offenses.
- Amend s. 497.201, F.S., to require cemetery companies to survey and plat cemetery grounds and submit a detailed map for approval by the department or board.
- Amend s. 497.333, F.S., to require licensed cemeteries to provide consumers with a cemetery map and physical description of the purchased burial plot and to display posters

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<sup>1</sup> OPPAGA, *Florida's Regulation of the Death Care Industry Has Many Weaknesses*, Report No. 02-21, March 2002.

and brochures that describe how the death care industry is regulated and how to file complaints.

In its recent progress report on its earlier recommendation, OPPAGA advised that it continued to support its earlier recommendations, including the recommendation that the Legislature consolidate the regulation of the death care industry into a single agency, with the existing boards combined into one.<sup>2</sup>

A group of industry representatives formed the Legislative Partnership Committee of 2003 (LPC03) to work towards consensus on a number of funeral and cemetery regulation issues. The LPC03 was composed of representatives of the Florida Funeral Directors' Association, the Florida Funeral & Cemetery Alliance, and the Florida Morticians Association. After many discussions, the LPC03 compiled its legislative recommendations into report form. The report contained many consensus issues. The LPC03 also recommended that the provisions of chs. 470 and 497, F.S., should be merged into one chapter.

The Independent Funeral Directors Association of Florida, the Florida Monument Builders Association, and the Florida Funeral & Cemetery Advocacy formed a coalition called the Funeral Consumer Protection Alliance (FCPA). The FCPA has proposed additional measures, including originally recommending the transfer of regulatory authority over ch. 497, F.S., from the DFS to the DBPR. Now the FCPA recommends the transfer of regulatory authority over ch. 470, F.S., from the DBPR to the DFS.

The industry recommendations formed the basis for several bills introduced during the 2003 Regular Session. These bills included SB 2016 by Senator Pruitt and the similar HB 495 by Representative Brown. SB 2016 made numerous changes to ch. 497, F.S. During the course of the Regular Session, the bill was amended to include changes to ch. 470, F.S., and to combine the regulatory boards into one board housed in the Office of the Chief Financial Officer. The bill passed the Senate, but died on the House Calendar on third reading.

In August, 2003, the Board of Funeral Directors and Embalmers voted to oppose the merger of the boards under the DFS. In September, 2003, the board voted that, in the event of a merger, the combined board should be under the DBPR.

### **Interim Project Report 2004-159**

Senate Interim Project report 2004-159 examined the appropriate manner by which to combine the regulatory functions of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services within one agency.

The report found that the merger of the boards was complicated by the differences between the boards' governing statutes. Chapter 497, F.S., contains all of the relevant regulatory provisions needed by the Board of Funeral and Cemetery Services for the effective regulation of that chapter, i.e., provisions relating to administration of the board, enforcement, rulemaking, investigative authority, and disciplinary proceedings. Conversely, the Board of Funeral Directors

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<sup>2</sup> OPPAGA, *Improvements to Death Care Industry Still Needed*, Report No. 04-17, February 2004.

and Embalmers must comply with provisions in ch. 455, F.S., as well as ch. 470, F.S., to complete its statutory framework. Chapter 455, F.S., sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR, and pursuant to s. 455.017, F.S., the provisions of this chapter are exclusively administered by the DBPR for the regulation of professions.

With few exceptions, most of ch. 455, F.S., is directly applicable to the functions and powers of the Board of Funeral Directors and Embalmers, or to the duties and rights of the professions regulated by that board. Consequently, any merger of the two boards must account for the provisions of ch. 455, F.S., and insure that the new combined board would be, in regard to its administration of ch. 470, F.S., able to continue to perform the functions and exercise the powers currently performed and exercised by the Board of Funeral Directors and Embalmers without altering the current rights and duties of its regulated professions. The interim report found that the extent of a combined board's authority would be clarified by duplicating relevant provisions in ch. 455, F.S., for the exclusive jurisdiction of a combined board.

The interim report recommended that, should the Senate take action to merge the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services, the Senate consider the following means by which to achieve that goal:

- Provide for a type two merger of the boards pursuant to s. 20.06, F.S.
- If the boards are merged into a department other than the DBPR, duplicate the provisions in ch. 455, F.S., for the combined board to effectively administer and enforce the provisions in ch. 470, F.S.
- Merge chs. 470 and 497, F.S., into a single chapter with each profession or service placed in a separate part that corresponds to the current chapter divisions.
- Combine into one part of the new combined chapter all of the powers and functions needed by the combined board for the administration of all the professions and services within its jurisdiction, including organization of the board, rulemaking authority, disciplinary procedures, and powers to administer oaths, take depositions, and issue subpoenas.
- The combined board's power to issue subpoenas, including subpoenas duces tecum, and to administer oaths should be identical for all the professions and services under its jurisdiction, and should utilize the more extensive authority found in s. 497.123, F.S.
- Provide the department that will house the combined board with sufficient resources to facilitate the transfer and/or integration of records and computerized data into its license management system.

### **Type Two Transfer**

Section 20.06, F.S. provides for the reorganization of government agencies by the transfer of the specified agencies, programs, and functions to other specified departments, commissions, or offices. Section 20.06(2), F.S., defines a type two transfer as:

...the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing

agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

An agency that is transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred.

### **Disposition of Dead Bodies or Human Remains**

Part III of ch. 406, F.S., pertains to the disposition of dead bodies and human remains. Section 406.50, F.S., governs the procedures for the disposition of unclaimed dead bodies or human remains. These procedures apply to all public officers, agents, or employees of every county or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons coming into possession, charge, or control of any dead human body or remains.

Section 406.53, F.S., sets forth procedures for the disposition of the body or remains of a person who was indigent. Chapter 406, F.S., does not define the term “indigent.” The Office of the Attorney General defined the term “indigent” in the context of this provision as meaning a person who does not have sufficient property or assets to provide for a burial.<sup>3</sup>

### **III. Effect of Proposed Changes:**

Sections 1 through 13 of the bill have an effective date of October 1, 2005. All other provisions of the bill are, unless otherwise provided, take effect on July 1, 2004.

**Section 1. Department of Financial Services.** The bill amends s. 20.121, F.S., to create the Division Funeral, Cemetery and Consumer Services and the Board of Funeral, Cemetery and Consumer Services within the Department of Financial Services (DFS).

**Section 2. Department of Business and Professional Regulation.** The bill amends s. 20.165, F.S., to delete the reference to the Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation (DBPR); thereby, abolishing that board.

**Section 3. Funeral Directors and Embalmers; Instruction on HIV and AIDS.** The bill amends s. 455.226, F.S., which establishes a continuing education requirement for human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS), to substitute the Board of Funeral, Cemetery and Consumer Services for the Board of Funeral Directors and Embalmers.

**Sections 4 and 5. Definitions.** The bill amends ss. 470.002 and 497.005, F.S., to amend the definitions for the terms “board,” “department,” “director,” and “division” as the terms will be

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<sup>3</sup> See Florida Attorney General Opinion. 91-33, interpreting the term “indigent” in s. 245.08, F.S. (1991) (since renumbered as s. 406.53, F.S.).

used upon the creation of the Division and Board of Funeral, Cemetery and Consumer Services on October 1, 2005. The term “board” would be redefined as the Board of Funeral, Cemetery, and Consumer Services. The term “division” would be defined as the Division of Funeral, Cemetery, and Consumer Services within the DFS. The term “director” would be defined as the director of the Board of Funeral, Cemetery, and Consumer Services.

**Section 6. Department; Powers and Duties.** The bill amends s. 497.105, F.S., which under current law authorizes the DFS to appoint the executive director of the Board of Funeral and Cemetery Services, to delete the reference to that board.

**Section 7. Board of Funeral Directors and Embalmers.** The bill repeals s. 470.003, F.S., which establishes the Board of Funeral Directors and Embalmers, s. 497.107, F.S., which establishes the headquarters of the Board of Funeral and Cemetery Services, and s. 497.109, F.S., which provides membership and meeting requirements for the Board of Funeral and Cemetery Services.

**Section 8. Board of Funeral, Cemetery, and Consumer Services.** The bill substantially amends s. 497.101, F.S., to create the Board of Funeral, Cemetery and Consumer Services (new board), and to establish the composition, powers, and duties for the new board. The new board would be composed of 10 members. The bill defines the composition of the new board 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, and own or operate an approved cinerator facility.
- Two members must be persons whose primary occupation is associated with a licensed cemetery company.
- Three members must be consumers who are residents of the state, who have never been licensed as funeral directors or embalmers, and who are not connected with a cemetery or cemetery company licensed pursuant to ch. 497, the death care industry, the practice of embalming, funeral directing, or direct disposition.
  - One consumer member must be at least 60 years of age or older.
  - One consumer member must be licensed as a certified public accountant pursuant to ch. 473, F.S.
- One member must be a monument dealer with a certificate of authority issued pursuant to ch. 497, F.S.
- One member must be the State Health Officer or his or her designee.

The bill establishes four-year terms for the members of the new board, who are appointed by the governor from nominations made by the Chief Financial Officer (CFO). The bill provides for the compensation of members of the new board. It sets a minimum meeting requirement of at least once every six months. It provides an exemption from civil liability for any current or former board member acting in good faith in their official capacity. The bill provides that the governor may suspend or remove a member of the board for the stated grounds.



**Section 9. Authority of the Board.** The bill creates s. 497.102, F.S., to provide that the new board shall enforce the provisions of chs. 470 and 497, F.S. The bill also gives the new board the authority to enforce the provisions of ch. 455, F.S., which are necessary to enforce the provisions of ch. 470, F.S.

The bill bars the DFS from adopting any rule, publishing any notice of proposed rule development that affect chs. 455, 470, and 497, F.S., without first presenting the proposed rule or rules to the new board for its review and recommendation. This provision does not apply to emergency rules.

**Section 10. Division of Funeral, Cemetery, and Consumer Services.** The bill creates s. 497.1021, F.S., to create the Division of Funeral, Cemetery, and Consumer Services (“the new division”) within the DFS. The new division would be responsible for the new board’s recordkeeping, examinations services, legal services, investigative services, and those services in ch. 455, F.S., that are necessary to perform the duties of ch. 470, F.S.

The bill provides that funds received from settlements with regulated entities and persons may be utilized by the division for contracting for the training of auditors and the conduct of examinations in order to enhance oversight and enforcement of laws and regulations governing the activities of licensees.

**Section 11. Director of the Division of Funeral, Cemetery, and Consumer Services.** The bill creates s. 497.1022, F.S., to establish the office of the Director of the Division of Funeral, Cemetery and Consumer Services (the director). The director is appointed by, and serves at the pleasure of, the CFO. The director serves as the executive director of the new board. The director is responsible for preparation of the new board’s agenda, presentation of division staff recommendations, reports of the activities of the division to the new board, and such other duties as may be assigned by the CFO.

**Section 12.** This section provides that all duties performed by the Secretary of the Department of Business and Professional Regulation under ch. 470, F.S., and all duties performed by the Comptroller under ch. 497, F.S., shall be performed by the CFO.

**Section 13.** This section transfers, by a type two transfer, as the term is defined in s. 20.06, F.S., the statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services to the new board.

The bill provides that transfer of authority to the new board would not affect the validity of any judicial or administrative action pending on September 30, 2005, or the validity of any license in effect on midnight, September 30, 2005, and provides that all licenses in effect at that time will remain in effect. It provides that the rules in effect on midnight, September 30, 2005, shall become the rules of the DFS.

**Section 14.** This section expressly abolishes the Board of Funeral, Cemetery Services and the Board of Funeral Directors and Embalmers effective midnight September 30, 2005.

**Section 15.** This section provides that, effective October 1, 2005, all fees collected under chs. 470 and 497, F.S., shall be deposited in the Regulatory Trust Fund for the Department of Financial Services.

**Section 16.** This section recognizes the need to conform the Florida Statutes to the provisions of this bill, and to direct the Division of Statutory Revision to provide the relevant Legislative committees the assistance, upon request, needed to enable such committees to draft conforming legislation.

**Section 17. Definitions.** The bill amends s. 470.002, F.S., to provide definitions for the terms “body parts,” “closed container,” “cremated remains,” “cremation,” “cremation chamber,” “cremation container,” cremation interment container,” “niche,” “processing,” “pulverization,” “temporary container,” and “urn.” The bill clarifies the term “casket” to provide that a casket is constructed of materials that may or may not be combustible. It redefines the term “cremation.” It adds cremation interment containers to the definition of “funeral merchandise.” According to industry representatives, these definitions in the bill are consistent with the LPC03 recommendations.

The term “cremation,” as amended by this bill in s. 470.002(10), F.S., differs from the definition of the same term in s. 497.005, F.S.

The bill clarifies the definition of the term “legally authorized person,” which under current law excludes a spouse arrested for an act of domestic violence, to exclude the spouse if the act of domestic violence resulted in, or contributed to, the death of the deceased. The bill further amends the definition of “legally authorized person” to provide that:

[W]here there is a person in any priority class listed in this subsection, the funeral establishment shall rely upon the authorization of any one legally authorized person of that class if that individual represents that he or she is not aware of any objection of the cremation of the deceased’s human remains by others in the same class of the person making the representation or of any person in a higher priority class.

This provision requires the funeral establishment to rely on the representation of any member of the listed priority classes. The funeral establishment is not authorized to consult with other members of the listed priority classes to confirm the representation.

**Section 18. Establishment of embalmer apprentice.** The bill amends s. 470.0085, F.S., to increase from one to three years the period that an embalmer apprentice may serve in an apprentice capacity. It increases from three to five years the period that an embalmer apprentice may serve in an apprentice capacity while enrolled in and attending a course in mortuary science or funeral service education at any mortuary or funeral service education college or school.

**Section 19. Renewal of registration of direct disposer.** The bill amends s. 470.018, F.S., to increase from three to six the maximum number of classroom hours of continuing education needed for renewal of a direct disposer registration that the department must prescribe by rule.

**Section 20. Direct disposal establishment.** The bill amends s. 470.021, relating to the practice of direct disposal, which is the practice of cremating human remains without embalming. The bill requires that the practice of direct disposal must be performed in a fixed location of at least 625 interior contiguous square feet. The location must also maintain or make arrangements of suitable capacity for the refrigeration and storage of dead human bodies that are handled and stored in the establishment. It establishes requirements for the maintenance and annual inspection of each cinerator used for the cremation of dead human bodies.

**Section 21. Funeral establishment; licensure.** The bill amends s. 470.024, F.S., to require that a funeral establishment maintain a preparation room equipped with necessary ventilation, drainage, and instruments for embalming dead human bodies. Alternatively, the bill requires that the funeral establishment make arrangements for a preparation room as established by board rule.

**Section 22. Cinerator facility; licensure.** The bill amends s. 470.025, F.S., to provide that an operator of a cinerator facility “shall be entitled to rely on the permission of a legally authorized person to cremate more than one human body” at one time. The bill also provides that cremation may include the processing and pulverization of bone fragments. The bill requires the operator of a cinerator facility to establish written procedures for the removal of human remains and bone fragments resulting from cremation. If the operator of the facility follows these procedures, the operator would not be liable for the unintentional or incidental commingling of human remains and bone fragments. A copy of the procedures must be available, upon request, to the department and legally authorized persons.

**Section 23. Cremation procedure required.** The bill creates subsection (3) of s. 470.0255, F.S., to permit the cremation of parts of human remains. The bill provides that this subsection does not authorize the cremation of body parts as defined in s. 470.002, F.S., which, as amended by section 17 of this bill, defines body parts to mean limbs or other parts of the human anatomy removed from a person or human remains for medical purposes during treatment, surgery, biopsy, or medical research, or that have been donated for medical research.

**Section 24. Preneed sales.** The bill amends s. 470.028, F.S., to provide that a funeral home director in charge of a funeral home establishment must be responsible for the control and activities of the establishment’s preneed agents. The person in charge of a direct disposal establishment must be responsible for the control and activities of the establishment’s preneed agents.

**Section 25. Reports of cases embalmed and bodies handled.** The bill amends s. 470.029, F.S., to change from the 10th to the 20th day of each month the date that each funeral establishment, direct disposal establishment, cinerator facility, and centralized embalming facility must report to the department the name of each deceased, and other information as may be required, embalmed or otherwise handled by the establishment or facility.

**Section 26. Prohibitions; penalties.** The bill amends s. 470.031, F.S., to prohibit the guarantee of the price of goods and services at a future date, except as provided in ch. 497, F.S. Prices may be guaranteed in preneed contracts made under ch. 497, F.S.

**Section 27. Identification of human remains.** The bill amends s. 470.0355, F.S., to require the proper identification of dead human remains in the casket, alternative container, or cremation container. Effective October 1, 2004, a licensed funeral establishment in charge of funeral arrangements in an unlicensed cemetery would be responsible for the identification of dead human remains. The bill sets forth requirements for the identification of dead human remains in unlicensed and licensed cemeteries. A tag or permanent identifying mark containing the name of the decedent and the date of death, if available, must be placed on the burial container, cremation interment container, or other container or on the inside of the crypt or niche. The board is authorized make rules specifying the materials and locations of the identifying tag or marker.

The bill requires direct disposal establishments to establish a system for the identification of dead human remains received, and for tracking the human remains from the time received until the time of delivery to authorized persons. A copy of the identification procedures must be made available, upon request, to the department and legally authorized persons.

**Section 28. Disciplinary proceedings.** The bill reenacts s. 470.036(1)(a), F.S., relating to discipline for violations of s. 455.227(1), F.S., or s. 470.031, F.S., for the purpose of incorporating the amendment into s. 470.031, F.S.

**Section 29. Definitions.** The bill amends s. 497.005, F.S., to create subsections defining the terms “niche” and “urn.” The bill clarifies the term “casket” to provide that a casket may be constructed of materials that may or may not be combustible. The bill clarifies the definition of the term “ossuary,” which is currently defined as a receptacle used for the communal placement of cremated human remains without benefit of urn or other container, to provide that the human remains will be commingled with other cremated human remains and are unrecoverable.

The bill clarifies the definition of the term “scattering garden,” which is defined under current law as a location set aside within a cemetery for the spreading or broadcasting of cremated human remains. The bill provides that in a scattering garden the human remains:

...have been removed from their container and can be mixed with or placed on top of the soil or ground cover or buried in an underground receptacle on a communal basis and that are unrecoverable.

**Section 30. Cemetery companies; authorized functions.** The bill amends s. 497.305, F.S., which authorizes cemetery companies to adopt bylaws establishing minimum standards for burial merchandise or the installation thereof, to require cemetery companies to include minimum standards for access to install burial merchandise. The bill requires that a cemetery company must comply with its adopted bylaws, unless it is not physically possible. The family of next of kin may waive the 12 inch minimum.

**Section 31. Standards for grave spaces.** The bill creates s. 497.306, F.S., to provide standards for adult grave spaces. The bill provides that the standard adult grave space shall measure at least 42 inches in width and 96 inches in length. This standard does not apply to preinstalled vaults in designated areas. Except for cremated remains, the bill requires no less than 12 inches of soil on top of the outer burial container.

The bill requires that effective October 1, 2004, a licensed cemetery must prepare a map documenting establishment of recoverable internal survey reference markers. The map must show:

- The number of grave spaces available for sale.
- The location of each grave space.
- The number designation assigned each grave space.
- The dimensions of a standard adult grave space.

Adult grave spaces established before October 1, 2004, are not required to meet the standard for dimensions or separation set forth in this section. This section only applies to adult grave spaces. It does not provide standards for grave spaces for children.

**Section 32. Identification of human remains in licensed cemeteries.** The bill creates s. 497.307, F.S., to provide identification requirements for human remains interred, entombed, scattered, or otherwise placed for final rest at licensed cemeteries on or after October 1, 2004. The bill requires a tag or a permanent identifying marker containing the name of the decedent and the date of death, if available, on the outer burial container, cremation container, or other container, or on the inside of the crypt or niche.

The bill provides that a licensed cemetery company may rely entirely on the identity stated on the burial transmit permit or on the identification supplied by a person licensed under ch. 470, F.S. The bill further provides that a cemetery company is not liable for any differences shown on the burial transmit permit or other identification and the actual identity of the dead human remains delivered to and buried in the cemetery.

**Section 33. Illegal tying arrangements.** The bill amends s. 497.325, F.S., to authorize companies that own and operate a cemetery company to establish reasonable rules for style and size of a monument or its foundation sold or serviced by noncemetery licensed persons. Current law only authorizes cemetery companies to make such rules. The bill also includes companies that own and operate a cemetery as being subject to the prohibitions and requirements in this section relating to the installation, care and maintenance of monuments.

**Section 34. Disclosure of information to the public.** The bill amends s. 497.333, F.S., to require a licensee under this chapter to provide to each customer a complete description of any monument, marker, or memorialization to be placed at a grave site.

**Section 35. Registration of monument establishments.** The bill amends s. 497.361, F.S., to provide that monument establishments must have a valid certificate of authority with the DFS. Sections 36 through 41 of this bill set forth the requirements for a monument establishment certificate of authority. Section 497.361, F.S., provides for a \$200 registration fee for a monument establishment. The bill does not affect this fee.

The bill also requires that monuments not delivered within a specified timeframe shall be considered a breach of contract, unless the monument establishment has a written contract to extend the delivery date. Under current law, monuments must be delivered within 120 days of the date of sale, but the monument establishment may request two 30-day extensions.

The bill provides that all contracts with the public must be approved by the DFS and must include a complete description of any monument, marker or related product. The bill further provides that no registration to operate as a monument establishment may be transferable or assignable.

**Section 36. Regulation of monument establishments.** The bill creates s. 497.365, F.S., to provide for an inspection program by the DFS for all monument establishments in accordance with the requirements of this act. The bill requires the DFS to adopt rules to regulate the approval of contracts for memorials and related products. The bill also requires written complaint procedures, mandatory responses to consumer's complaints, disclosure to the public of ownership, the fingerprinting of owners, and appropriate record keeping.

**Section 37. Monument establishment business location.** The bill creates s. 497.371, F.S., to require that a monument establishment business must have a specific street address or location consisting of office and display areas. The establishment must comply with local government zoning regulations and may not be located on tax-exempt property. The monument establishment's facility must be open to the public during regular business hours, with facilities to design, inscribe, and install monuments and related products. This section establishes a licensure requirement for the installation of monuments, markers, and related products.

**Section 38. Licensure of monument establishments to sell preneed.** The bill creates s. 497.379, F.S., to provide that a monument establishment cannot sell a preneed contract without having a valid certificate of authority from the DFS. A person must have at least three years of experience in the management of an establishment selling monuments, markers, and related products to qualify for the certificate of authority.

**Section 39. Monument establishment sales representative.** The bill creates s. 497.385, F.S., to require that all persons selling monuments, markers, or related products must register with the board, including persons licensed under chs. 470 and 497, F.S. The bill requires any person selling monuments, markers, or related products for a licensed monument establishment must register as a preneed agent pursuant to the requirements of ch. 497, F.S. Section 497.439, F.S., provides for the registration of preneed sales agents.

**Section 40. Monument establishment preneed contracts.** The bill creates s. 497.391, F.S., to require, effective October 1, 2005, board approval of any preneed contract written by a monument dealer or establishment.

**Section 41. Licensed monument establishment financial requirements.** The bill creates s. 497.395, F.S., to establish financial requirements for a monument establishment's certificate of authority to make preneed sales. Licensed monument establishments must maintain a minimum net worth of \$10,000. The bill requires monument establishments to submit a recent year-end financial statement with their application for licensure, which must be prepared in accordance with generally accepted accounting principles (GAAP). The bill establishes annual fees for renewal of monument establishment certificates of authority. The renewal fees are based on the establishment's sales volume and range from \$500 to \$1,250, depending on the total sales of the

establishment. Under current law, monument establishments must register with a fee of \$200, and are required to renew their registration every two years with a renewal fee of \$150.

The bill provides that applicants for a monument establishment certificate of authority that do not meet the financial requirements set forth in the bill, may submit additional evidence or agree to additional oversight as a condition to receiving or retaining a certificate of authority. The bill provides examples of acceptable additional evidence. The bill also establishes oversight requirements.

**Section 42. Certificate of authority required.** The bill amends s. 497.405, F.S., to expand the activities by a cemetery that cannot be performed without a certificate of authority. Under the bill, a cemetery must be licensed by the board before it can advertise to sell or make arrangement for services, merchandise, or burial rights on a preneed basis. The bill expands the list of merchandise and services that can be sold by religious-institution-owned cemeteries to their members and their families to include cremation internment containers.

**Section 43. Cancellation of, or default on, preneed contracts.** The bill amends s. 497.419(4), F.S., to exempt from the 30-day refund requirement for cancelled preneed contracts any amounts allocable to any burial rights, merchandise, or service that has been used by the purchaser.

The bill creates s. 497.419(11), F.S., to provide that failure to install a monument within 180 days of interment shall be considered a breach of contract by the preneed certificateholder, unless the preneed certificateholder has a written agreement to extend the installation date. The purchaser is entitled to a full refund within 30 days of the purchaser's written request for a refund after the breach of contract by the preneed certificateholder.

**Section 44. Inactive or revoked certificateholders.** The bill amends s. 497.436, F.S., relating to the notice that is required to be filed with the board before surrendering a certificate of authority. The bill clarifies that the notice provision is intended to protect the contract purchaser. The bill makes permissive the requirement under current law that the board must review the certificateholder's trust funds, trust agreements, and evidence of all outstanding preneed contracts. The bill authorizes the board to perform other procedures it deems necessary upon the surrender of a certificate of authority.

**Section 45. Unclaimed dead bodies or human remains.** The bill amends s. 406.50, F.S., to provide that multiple claims for a body shall be prioritized in accordance with s. 732.103, F.S., which establishes inheritance rules. It provides that an "unclaimed" body is one that is not claimed by a legally authorized person, as defined in s. 470.002, F.S., for interment at that person's expense

**Section 46. Death of indigents.** The bill amends s. 406.53, F.S., to provide that indigent relatives may claim a body in a manner consistent with the policy of the agency in possession or control of the body. It defines the term "indigent" to mean income at or below 100 percent of the recognized federal poverty guidelines produced by the United States Department of Health and

Human Services (HHS). The current HHS federal poverty guideline for the 48 contiguous states is \$9,310 for one person.<sup>4</sup>

**Section 47.** The provisions of this bill, except as otherwise provided shall take effect on July 1, 2004.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

Monument establishments that make preneed sales would have to pay the annual renewal fees for a certificate of authority, which fees range from \$500 to \$1,250, depending on the total sales of the establishment. According to the DFS, licensing fees may be increased to meet the anticipated operational needs for this self-funded program.

B. Private Sector Impact:

Monument establishment would also be required to maintain a minimum net worth of \$10,000 in order to make preneed sales. According to the DFS, the surveying requirements of the bill may require cost in the amount of approximately \$15,000 per acre for a survey of cemetery gardens, and, regarding the identification requirements, costs of approximately \$6,500 for identification tags.

C. Government Sector Impact:

According to the DBPR, one FTE and \$38,439 could be deleted by this bill because department staff does not devote all of their time solely to the funeral profession, and the staff workload varies due to the unpredictable nature of complaints. The direct costs related to the board office are \$5,250 in Other Personal Services and \$14,956 in expenses. In addition, the following categories could be reduced: Unlicensed Activities (\$5,000), Service Operations (\$100,000), and Attorney General Contract (\$31,000). In the Service Operation Program, which supports the board through the Customer Contact Center, Central Intake, and Testing & Continuing Education service entities, one FTE and \$36,573 could be reduced in Central Intake under this proposed legislation. In the

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<sup>4</sup> See *Annual Update of the HHS Poverty Guidelines*, Federal Register, vol. 69, no. 30, pages 7335-7338, February 13, 2004.



Information Technology Service Entity, the department anticipates a decrease of \$24,855. Regarding non-operating expenditures, the department states:

The Service Charge to General Revenue expenditure is dependent on the amount of revenue collected each year. Due to the biannual renewals for this profession, the amount will vary each year. During a two year cycle the amount will average \$57,000 per year. Transfer to the Administrative Trust Fund varies each year according to the workload allocation methodology.

According to the DFS, it will need five positions for the new division, and five more positions for the regulation of monument establishments. According to the DFS, it would need an additional seven positions to conduct field inspections and investigate complaints. The DFS advises that it may need additional positions to provide licensing services which are currently outsourced by the DBPR.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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