

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 983 Burial Rights
SPONSOR(S): Justice, Antone, and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 204

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	<u>16 Y, 0 N</u>	<u>Sheheane</u>	<u>Billmeier</u>
2) <u>Judiciary</u>	<u>18 Y, 0 N</u>	<u>DeJesus</u>	<u>Havlicak</u>
3) <u>Finance and Tax</u>	<u>21 Y, 0 N</u>	<u>Monroe</u>	<u>Diez-Arguelles</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill provides that any person who purchases a burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden for the disposition of human remains may, at his or her option, permanently record the purchase of such burial right with the clerk of the court in the county where the burial right is located. The purpose of the recordation is for public notification and to establish a permanent official record in the county; however, such recordation does not create any priority of interest or ownership rights as to the purchaser who records such burial rights.

This bill will have an indeterminate fiscal and workload impact on the clerks of the court because the number of people who will choose to record the purchase of their burial rights is not known.

This bill takes effect July 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0983e.ft.doc
DATE: March 30, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

FUNERAL AND CEMETERY SERVICES

Currently, chapter 497, F.S., provides for the regulation of funeral and cemetery services by the Department of Financial Services (DFS) and the Board of Funeral and Cemetery Services (board) created within DFS for that purpose.¹ The board administers and enforces the provisions of the law which is designed to protect purchasers of burial rights, and preneed funeral and burial merchandise and services. All persons operating cemeteries must be licensed by DFS pursuant to ch. 497, F.S., unless specifically exempted.²

Although there is nothing in the law requiring a cemetery company to specifically maintain burial ownership records, there is a current administrative rule requiring companies to make available "lot ownership records" to DFS.³ Furthermore, ch. 497, F.S., requires cemetery companies to keep all financial records of the company and make such records available at reasonable times for examination by DFS.⁴ Additionally, the records of every burial in the cemetery must be kept and DFS is authorized to examine the financial affairs of any cemetery company and any preneed sales certificateholder.⁵ However, it has been reported that there are cases where cemetery companies have lost lot ownership records and have even sold lots twice.⁶ Currently there is no specific statutory authority for a county clerk to record documents pertaining to the purchase of a burial right.

¹ See s. 497.101, F.S. Creates the Board of Funeral and Cemetery Services. Note that funeral directors and direct disposers [cremation] are separately licensed and regulated by the Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation under ch. 470, F.S.

² See s. 497.005(10), F.S. (defining "cemetery" to mean a place dedicated to and used for the permanent interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment or disposition of cremated human remains; or any combination of one or more of such structures or places.)

³ Rule 3F-6.005, Fla. Administrative Code.

⁴ See s. 497.309(1), F.S.

⁵ See s. 497.103(4), F.S.

⁶ See article "Menorah Gardens cemetery civil trial to open Monday" in the *South Florida Sun-Sentinel*, November 30, 2003. In December 2001, relatives of those buried in Menorah Gardens filed suit alleging the cemetery recklessly or intentionally removed or disturbed human remains, discarded them in nearby woods or buried other remains in the same plots. In December 2003, the world's largest funeral services firm, Service Corporation International (SCI), which owns two Menorah Gardens cemeteries, agreed to pay \$100 million to settle part of the Menorah Gardens class-action lawsuit. Further, SCI settled with DFS and the Florida Attorney General for \$14 million, which was used to pay restitution to victims and fines. In the case of Florida Memorial Gardens, a cemetery owned by SCI, the late Senator Howard Futch had to be reburied after the cemetery mistakenly sold an adjacent plot intended for his wife. The DFS is currently considering administrative action against SCI.

PROPOSED CHANGES

This bill creates s. 497.310, F.S., to provide that any person who purchases a burial right,⁷ belowground crypt,⁸ grave space,⁹ mausoleum,¹⁰ columbarium,¹¹ ossuary,¹² or scattering garden¹³ for the internment, entombment, inurnment, or other disposition of human remains may, at his or her option, permanently record the purchase of such burial right with the clerk of the court in the county where the burial right is located. The purpose of such recordation is for public notification and to establish a permanent record in the county; however, the recordation does not create any priority of interest or ownership. It further mandates that the clerk record the evidence of the purchase of such burial right upon receiving payment by the purchaser of a service charge as provided by law.

The effect of this bill would be to enable persons to locate the burial site in the official records of the county in cases where the deceased left no burial records. Essentially, this bill provides another method to determine who has purchased burial rights within the state of Florida.

The bill requires the clerk of the court to record the purchase of any burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden should any person wish to record such a purchase. Charges for services provided by the clerk as to recording documents and instruments are set forth by statute.¹⁴

C. SECTION DIRECTORY:

Section 1. Creates s. 497.310, F.S., to permit a person to record the purchase of a burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden for the internment, entombment, inurnment, or other disposition of human remains with the clerk of the court.

Section 2. Amends s. 497.003, F.S., to provide that s. 497.310 applies to all cemeteries in the state.

Section 3. Provides that the act shall take effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁷ See s. 497.005(6), F.S. (defining "burial right" as the right to use a grave space, mausoleum, columbarium, ossuary, or scattering garden for the interment, entombment, inurnment, or other disposition of human remains.)

⁸ See s. 497.005(3), F.S. (defining "belowground crypts" as interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as "lawn crypts," "westminsters," or "turf-top crypts.")

⁹ See s. 497.005(20), F.S. (defining "grave space" as a space of ground in a cemetery intended to be used for the interment in the ground of human remains.)

¹⁰ See s. 497.005(22), F.S. (defining "mausoleum" as a structure or building which is substantially exposed above the ground and which is intended to be used for the entombment of human remains.)

¹¹ See s. 497.005(13), F.S. (defining "columbarium" as a structure or building which is substantially exposed above the ground and which is intended to be used for the inurnment of cremated human remains.)

¹² See s. 497.005(28), F.S. (defining "ossuary" as a receptacle used for the communal placement of cremated human remains without benefit of an urn or any other container. It may or may not include memorialization.)

¹³ See s. 497.005(32), F.S. (defining "scattering garden" as a location set aside, within a cemetery, which is used for the spreading or broadcasting of cremated remains. It may or may not include memorialization.)

¹⁴ See s. 28.24(15), F.S. (The fee for recording, indexing, and filing any instrument not more than 14 inches by 8 1/2 inches is \$5 for the first page and \$4 for each additional page or fraction thereof.)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Individuals who decide to record the purchase of their burial rights with the Clerk of the Court will have to pay a nominal fee of \$5 per page (and \$4 for each additional page) under this bill. It is difficult to estimate the number of persons who will record their burial right documents since the recording provisions are optional.

2. Expenditures:

This bill will have an indeterminate fiscal and workload impact on the clerks because there is no way to determine the number of people who will record the purchase of their burial rights. According to representatives with the board, they do not keep information pertaining to the annual number of burial rights sold.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals choosing to record the purchase of burial rights will have to pay a nominal fee of \$5 per page (and \$4 for each additional page).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The Clerk of the Circuit Court has authority under s. 28.222(3)(a), F.S., to record the following instruments: deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, and other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it; extensions, assignments, releases, cancellations, or satisfactions of mortgages and liens; and powers of attorney relating to any of the instruments. Since the clerk of the circuit court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or

she is clerk, this statute may already provide authority to the clerks to record the purchase of burial rights.

2. Replacing the word "it" with "recordation" on line 27 may improve the clarity of the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.