

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Higher Education Appropriations Committee

BILL: CS/CS/SB 926

INTRODUCER: Education Pre-K-12 Appropriations Committee, Banking and Insurance Committee and Senator Altman, and others

SUBJECT: Columbaria at State Universities

DATE: April 15, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodham/Emrich</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harkey</u>	<u>Matthews</u>	<u>HE</u>	<u>Favorable</u>
3.	<u>Bryant</u>	<u>Hamon</u>	<u>HI</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

This bill provides an exemption from the rules pertaining to cemeteries under the Florida Funeral, Cemetery, and Consumer Services Act (Act), to allow for a columbarium¹ consisting of five acres or less to be located on the main campus of any of the eleven state universities.² A university or a university direct-support organization (DSO) that established a columbarium on its main campus must ensure that the structure is constructed and perpetually kept and maintained in a manner consistent with the intent of the Act. Universities constructing and operating columbaria under this exemption must comply with specified rules including the maintenance of burial records and anti-discrimination provisions.³

¹ A columbarium is defined as a structure or building that is intended to be used for the inurnment of cremated remains under s. 497.005(16), F.S.

² The University of Florida, Florida State University, Florida Agricultural and Mechanical University, the University of South Florida, Florida Atlantic University, the University of West Florida, the University of Central Florida, the University of North Florida, Florida International University, Florida Gulf Coast University and New College of Florida.

³ s. 497.260(2), F.S.

Establishing a columbarium allows alumni and other university supporters to have their cremated remains placed in a columbarium on the main university campus. Other institutions of higher learning which have established columbaria on their premises include the University of Richmond, the University of Virginia, Sweet Briar College, the Citadel, and Centre College.⁴

This bill amends s. 497.260, Florida Statutes.

II. Present Situation:

Regulation of Cemeteries and Columbaria

The Florida Funeral, Cemetery, and Consumer Services Act (Act),⁵ provides for the regulation of cemeteries, columbaria, cremation services, cremation practices, cemetery companies, pre-need contracts for funeral services or merchandise, dealers and monument builders, funeral directors and funeral establishments. The Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services (DFS) is charged with “all authority provided for under the Act.”

A cemetery is comprised one of the following:

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 remains; or any combination of one or more of such structures or places.⁶

A columbarium is “a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains.”⁷ Thus for purposes of regulation under the Act, a columbarium is considered a cemetery and the relevant portions of ch. 497, F.S., which apply to cemeteries also apply to columbaria.

Under the Act, persons intending to operate a cemetery must apply and be approved for licensure by DFS, have a net worth of \$50,000, establish a care and maintenance trust fund of \$50,000 and hold unencumbered fee simple title to all the cemetery land.⁸ The cemetery property must contain at least 30 contiguous acres and be in compliance with zoning and other provisions under the Act.⁹ The Act establishes time limits for a cemetery company to construct columbaria,¹⁰ provides standards for construction of columbaria¹¹ and mandates that a company which plans to offer for sale space in a section of a columbarium establish a preconstruction trust fund by written instrument.¹²

⁴Findler, A., “Colleges Offering Campuses as Final Resting Places,” New York Times, May 18, 2007, readable at <http://query.nytimes.com/gst/fullpage.html?res=950DEFDF1131F93BA25756C0A9619C8B63&sec=&spon=&pagewanted=all>

⁵ ch. 497 F.S.,

⁶ s. 497.005(16), F.S.

⁷ s. 497.005(16), F.S.

⁸ s. 497.263, F.S.

⁹ *Id.*

¹⁰ s. 497.272, F.S.

¹¹ s. 497.271, F.S.

¹² s. 497.272, F.S.

Exceptions to Cemetery Regulation under the Act

Currently s. 497.260(1)(a-h), F.S., provides for eight exceptions to the cemetery rules and requirements under the Act:

- Cemeteries of five acres or less owned by a religious institution;
- County and municipal cemeteries;
- Community and non-profit cemeteries providing single-level ground burial and not selling burial spaces or merchandise;
- Cemeteries owned and operated by a religious institution prior to June 23, 1976;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization;
- A columbarium consisting of less than one-half acre contiguous to and owned by an existing religious institution subject to local government zoning;
- Family cemeteries of less than two acres not selling burial spaces or merchandise; and
- A mausoleum of two acres or less contiguous to and owned by a religious institution that has been incorporated at least 25 years and that possesses sufficient funds in an endowment fund to construct the mausoleum, subject to local government zoning.

Section 497.260(2), F.S., specifies all that cemeteries in Florida, which includes cemeteries, columbaria and mausoleums operating under the above exceptions, are subject to the following requirements:

- Every cemetery company must keep records regarding burials in its cemetery as to name, date of burial, and lot, plot and space of burial;¹³
- Discrimination by race, color, creed, marital status, sex or national origin is prohibited;¹⁴
- The solicitation of sales of burial rights, merchandise or services by licensees must be done according to the board's regulations;¹⁵
- A person purchasing a means of disposition¹⁶ of human remains has the right to permanently record the purchase with the clerk of the county where the purchased means of disposition exists, subject to normal record keeping fees in the county of record;¹⁷
- A cemetery company may not charge a fee for the installation of a monument or marker not purchased from it;¹⁸
- The sellers of a grave space may not tie that purchase to the purchase of a monument;¹⁹ and
- A county or municipality may take action to provide for maintenance and security of an abandoned cemetery.²⁰

¹³ s. 497.276(1), F.S.

¹⁴ s. 497.152(1)(d), F.S.

¹⁵ s. 497.164, F.S.

¹⁶ Disposition of human remains in s. 497.2765, F.S., deals with persons purchasing some means for the disposition of human remains, such as in a cemetery. It does not refer to "final disposition" as defined in s. 497.005(31) F.S.

¹⁷ s. 497.2765, F.S.

¹⁸ s. 497.278, F.S.

¹⁹ s. 497.280, F.S.

²⁰ s. 497.284, F.S.

State Universities in Florida and University Direct-Support Organizations

Section 1000.21(6)(a-k), F.S., defines the term “state university” to include the University of Florida, Florida State University, Florida Agricultural and Mechanical University, the University of South Florida, Florida Atlantic University, the University of West Florida, the University of Central Florida, the University of North Florida, Florida International University, Florida Gulf Coast University and New College of Florida. A “university direct-support organization” is defined under s. 1004.28(1), F.S., to mean a Florida not for profit entity organized exclusively to receive, invest and administer property and make expenditures for the benefit of a state university. The university board of trustees must certify that the DSO is operating in a manner consistent with the goals of the university and in the best interest of the state.

III. Effect of Proposed Changes:

This bill exempts from cemetery regulation a columbarium consisting of five acres or less which is located on the main campus of a state university. The bill provides that a university or a university DSO that establishes a columbarium must ensure that the structure is constructed and perpetually kept and maintained in a manner consistent with s. 497.260(2), F.S., and the intent of ch. 497, F.S.

Universities constructing and operating columbaria would have to comply with rules pertaining to the maintenance of burial records, discrimination prohibitions, solicitation rules and other provisions under s. 497.260(2), F.S. The actual funeral services and cremation procedures would not be exempt from the provisions of ch. 497, F.S., and would have to be performed by a licensed entity. After the cremation, the remains would be forwarded to the university columbarium for inurnment.

Proponents of this legislation state that for many years, the University of Florida has had to address alumni requests for a place on campus for family and friends to place ashes after the death of an alumnus or friend of the institution. The construction of columbaria on the main campus of the university would provide a needed and desired resource for alumni and friends, and also build a sense of history at the university. According to these representatives, the construction, operation and maintenance of the columbaria would be a self-supporting activity supported by revenues generated from the sales and interest earnings from the niches, and therefore would not require state funding.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Competition with private sector columbaria firms would likely be minimal. Should columbaria on university campuses become widely used they could possibly benefit private sector firms such as owners of crematoria or sellers of inurnment containers.

C. Government Sector Impact:

If the construction, operation and maintenance of the university columbaria were a self-supporting activity supported by revenues generated from the sales and interest earnings from the niches, no state funds would be required.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Higher Education Appropriations on April 15, 2009

- The committee substitute removes language relating to the relocation of the columbarium.

CS by Banking and Insurance on March 4, 2009:

- References the statutory definitions of the terms “state university” and “university direct-support organization”;
- Deletes the reference to the Board of Governors; and
- Clarifies that the columbarium is to be constructed, kept and maintained in a manner consistent with s. 497.260(2), F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
