

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1593 Seminole County

SPONSOR(S): Smith, D.

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	18 Y, 0 N	Darden	Miller
2) Insurance & Banking Subcommittee	13 Y, 0 N	Fortenberry	Luczynski
3) State Affairs Committee	22 Y, 0 N	Darden	Williamson

SUMMARY ANALYSIS

Cemeteries in Florida are regulated under ch. 497, F.S., the "Florida Funeral, Cemetery, and Consumer Services Act." A person may not operate a cemetery without obtaining a license from the Department of Financial Services (DFS). An applicant for a cemetery license must meet certain requirements concerning the size and location of the cemetery, as well as financial criteria. A cemetery may be exempt from licensure if owned by a religious institution, community and non-profit association, county, municipality, or fraternal organization, subject to certain criteria, or is a family cemetery of less than two acres.

The bill provides that the provisions of ch. 497, F.S., as well as rules adopted by DFS pursuant to that chapter, do not apply to cemeteries of less than three acres that are located in the unincorporated area of Seminole County and that do not sell burial spaces or burial merchandise.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Cemetery Regulation

Cemeteries in Florida are regulated pursuant to the “Florida Funeral, Cemetery, and Consumer Services Act.”¹ A person may not operate a cemetery without obtaining a license from the Department of Financial Services (DFS).² An applicant for a license to operate a cemetery (applicant) must be a corporation, partnership, or limited liability company and must provide the following information, using forms and procedures prescribed by rules adopted by DFS:

- The name, principal place of business, date of formation, and federal tax identification number of the applicant;
- Historical sketches and audited or unaudited financial statements concerning the applicant and each principal of the applicant;
- Any and all names under which the cemetery may do business if licensed, if different from the applicant's name;
- The exact location of the proposed cemetery;
- The exact number of acres of the proposed cemetery, including a minimum of 30 contiguous acres;
- A description of the proposed financial structure of the cemetery;
- A legal description of the cemetery;
- Maps or surveys of the proposed cemetery, and maps showing the location of the proposed cemetery in the local area, prepared by a licensed Florida professional surveyor; and
- A description of the development plans for the proposed cemetery.³

Applicants must have a net worth of at least \$50,000, disclose any criminal history and disciplinary proceedings against a professional license, submit fingerprints, and demonstrate by clear and convincing evidence that the applicant has the ability, experience, financial stability, and integrity to operate a cemetery.⁴

If DFS finds an applicant meets the above qualifications, then DFS may issue a license if the applicant:

- Establishes a care and maintenance trust fund of at least \$50,000 that is certified by a trust company, state or national bank holding trust powers, or a savings and loan association holding trust powers;
- Files an opinion or certification from a Florida attorney in good standing, or a Florida title company, that the applicant holds unencumbered fee simple title to all land identified in the application;
- Obtains approval from local zoning authorities, or if no approval by local zoning authorities is required, obtains approval of residents adjacent to the proposed cemetery;
- Designates a general manager of the cemetery who has at least three years of cemetery management experience, has the ability to operate a cemetery, and is a person of integrity;
- Has developed at least two acres for use as burial space, including a paved road from a public roadway to the developed section; and
- Files a notice, signed by a licensed Florida attorney, in the public records of the county that states the land identified in the cemetery application may not be sold, conveyed, leased, mortgaged, or encumbered without the prior written approval of DFS.⁵

¹ S. 497.001, F.S.

² S. 497.263(1), F.S.

³ S. 497.263(2)(a)-(g), (i)-(l), F.S.

⁴ S. 497.263(2)(h), (m)-(p), F.S.

⁵ S. 497.263(3), FS.

A cemetery license is not transferable or assignable, but control of a cemetery may be transferred, subject to approval by DFS, to another person or entity who meets the qualifications for licensure.⁶

The cemetery owner is responsible for ensuring the grounds, structures, and other improvements of the cemetery are well cared for and maintained in a proper and dignified condition.⁷ DFS may adopt rules defining differing levels of care or maintenance based on industry practices, economic and physical feasibility, location, or intended uses.

The laws regarding cemetery licenses and the related rules regarding care and maintenance of cemeteries do not apply to cemeteries that are:

- Religious institution cemeteries, if the cemetery is less than five acres and provides only single-level ground burial or if the cemetery was owned and operated or dedicated prior to June 23, 1976;
- County or municipal cemeteries;
- Community and non-profit association cemeteries, if the cemetery provides only single-level ground burial and does not sell burial spaces or burial merchandise;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent;
- A columbarium⁸ of less than one-half acre, or a mausoleum⁹ of less than 2 acres, that is owned by and immediately contiguous to an existing religious institution facility and subject to local government zoning;¹⁰
- A columbarium of less than five acres located on the main campus of a state university;¹¹ or
- Family cemeteries of less than two acres that do not sell burial spaces or burial merchandise.¹²

However, all cemeteries, including those not subject to licensure requirements, must maintain burial records, abide by anti-discrimination provisions, follow DFS rules concerning solicitations, and allow purchasers of grave space to record those purchases with the clerk of the circuit court in the county where the grave space is located.¹³ All cemeteries are prohibited from requiring the purchase of a monument as a condition of purchasing a grave space and from charging a fee for the installation of a monument purchased from and installed by a person or firm other than the cemetery or its agents.¹⁴ A county or municipality may take action to provide for the maintenance and security of any cemetery within its boundaries that has been abandoned or not reasonably maintained for a period of six months or more.¹⁵

Effect of Proposed Changes

The bill provides that the provisions of ch. 497, F.S., as well as rules adopted by DFS pursuant to that chapter, do not apply to cemeteries of less than three acres that are located in the unincorporated area of Seminole County and do not sell burial spaces or burial merchandise.

B. SECTION DIRECTORY:

Section 1: Creates an exception to ch. 497, F.S., for cemeteries of three acres or less that are located in unincorporated Seminole County and do not sell burial spaces or burial merchandise.

⁶ S. 497.264, F.S.

⁷ S. 497.262, F.S.

⁸ 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. See s. 497.005(18), F.S.

⁹ A "mausoleum" is a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains. See s. 497.005(46), F.S.

¹⁰ Ss. 497.260(1)(f) and (h), F.S. The religious institution must ensure the columbarium or mausoleum is perpetually kept and maintained in a manner consistent with the intent of ch. 497, F.S.

¹¹ See s. 1000.21(6), F.S.

¹² S. 497.260(1), F.S.

¹³ S. 497.260(2), F.S.

¹⁴ *Id.*

¹⁵ S. 497.284, F.S.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? January 27, 2021

WHERE? The *Orlando Sentinel*, a daily newspaper of general circulation in Seminole County, Florida.

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes ☒ No ☐

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill exempts qualifying cemeteries from all provisions of ch. 497, F.S., including those otherwise applicable to all cemeteries.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.