

STORAGE NAME: h3763a.rpp

DATE: April 8, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Real Property and Probate
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3763

RELATING TO: Funeral and Cemetery Services

SPONSOR(S): Representative Crist and Others

COMPANION BILL(S): S 1572 (Identical)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY AND PROBATE 5 YEAS 0 NAYS
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I. SUMMARY:

HB 3763 is entitled the "Cemetery Preservation and Consumer Protection Act", and amends several sections, and creates new sections, in Chapter 497, Florida Statutes, dealing with funeral and cemetery services. The bill provides a definition of "care and maintenance" as it relates to cemeteries, requires all licensed cemeteries to perform care and maintenance, and authorizes the Board of Funeral and Cemetery Services ("Board") to make rules spelling out the minimum care and maintenance functions to be performed.

If a licensed cemetery wishes to sell lands within the cemetery, the licensee will have to give public notice and possibly undergo a public hearing to seek approval for the sale, if the land in question has ever been used for interments of human remains. If the land in question has never been used for interments, then no public notice or hearing will be required before the Department of Banking and Finance ("Department") approves or denies the sale.

New mausoleums or columbaria (buildings used as repositories for cremated remains) must be built in accordance with construction standards to be developed by the Board of Funeral and Cemetery Services. These standards will be promulgated as part of the state's minimum building codes by the Board of Building Codes and Standards. Any significant alterations or renovations of existing mausoleums or columbaria must also comply with the new standards. The Board of Funeral and Cemetery Services must also make rules assuring that all crypts and niches are securely and permanently sealed after human remains have been placed therein. Requirements for preconstruction trust funds for new mausoleums are extended to include columbaria.

The bill enhances criminal penalties for cemetery vandalism from misdemeanors to felonies. Grave robbing is upgraded to a second degree felony. Civil enforcement is improved by specifying the Attorney General as a potential plaintiff, raising the minimum damages for a violation from \$500 to \$1,000, and by adding a section allowing the use of nuisance abatement procedures for violations causing physical problems at cemeteries. Greater flexibility is given counties in carrying out their duties to bury or cremate unclaimed bodies.

The bill creates a task force within the Department to study the problems of the estimated 2,000 abandoned cemeteries in Florida, and to make recommendations to the Legislature.

The bill is expected to have a fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Due to the aging of Florida's population and the influx of retirees to the state, the cemetery industry has become one of the fastest-growing segments of the economy, with almost \$200 million gross sales by cemetery licensees last year. Chapter 497, Florida Statutes, regulating the cemetery industry, primarily addresses regulation of sales practices by licensees, and assuring the financial stability and safety of both cemetery companies and trust funds for the perpetual care and maintenance of cemeteries. The few references in the existing statute to care and maintenance and other physical operations at cemeteries are very general, e.g. "the failure to maintain cemetery grounds properly may cause significant emotional stress", s. 497.002(1), Florida Statutes; income from the care and maintenance trust fund of the cemetery shall be used solely for the care and maintenance of the cemetery, including "maintenance of the monuments, which maintenance shall not be deemed to include the cleaning, refinishing, repairing, or replacement of monuments; for reasonable costs for administering the care and maintenance, and for reasonable costs of administering the trust fund", s. 497.241 Florida Statutes. There is no legislative guidance concerning what must be done by a cemetery company in order to provide proper and adequate care and maintenance.

Pursuant to s. 497.229 Florida Statutes, cemeteries are required to have a minimum of 15 acres to be licensed. If the cemetery company has more than 15 acres within its boundaries and wish to sell or otherwise convey some of the surplus land for non-cemetery purposes, they may do so with the approval of the Department of Banking and Finance. However, there is no legislative guidance to assist the Department in deciding whether to approve the request. The present law requires that, if there have previously been human remains interred in the land to be sold, those human remains must first be removed, and the cemetery company must acquire all outstanding burial rights and other property interests in the land. There is no present requirement that the public be informed that cemetery land is being proposed to be sold and converted to non-cemetery uses, nor any requirement that the purchaser be informed that the land was previously used for burials.

Mausoleums and columbaria are marketed as being durable and permanent structures to serve as the final resting place for the deceased. However, no statutes have been found establishing standards for materials, construction, or durability of such structures to assure that the promised permanence is achieved. The Standard Building Code, used by most local governments in Florida as a minimum code, has no specific requirements for mausoleums or columbaria; instead, the code lumps them in the general category of "storage buildings". Thus, legally there would be no impediment to a cemetery company erecting a metal warehouse, or a 2x4 wood frame structure with vinyl siding, or even a double-wide mobile home, then calling it a mausoleum and selling crypt spaces therein to the public.

Purchasers of burial rights in a proposed mausoleum under construction are protected by the provisions of s. 497.257 Florida Statutes, which require that a proportionate share

of the cost of completion of the construction be placed in a preconstruction trust fund. If the construction is halted, the trustee may use the trust funds to complete the building. However, there is no similar provision protecting purchasers of burial rights in a proposed columbarium.

Section 872.02 (1), Florida Statutes, provides misdemeanor penalties for vandalism-related activities directed towards graves, tombs, monuments, fences, etc., where the damage is less than \$100. Subsection (2) makes wilfully disturbing the contents of a grave or tomb a third degree felony. By contrast, ss. 810.09(2)(d) and (e) Florida Statutes, respectively, punish simple trespass on a posted construction site or a posted commercial horticulture site as third degree felonies.

Enforcement of Ch. 497, Florida Statutes, by the Board of Funeral and Cemetery Services is covered by several statutory sections, but only s. 497.527, F.S., presently gives a citizen a right of action against a person or company violating ch. 497, F.S. Under that provision, any person may bring an action in circuit court against an alleged violator, and, if they prevail, they may recover either their actual damages or \$500, whichever is greater. A problem has arisen in which an attorney is attempting to bring a class action lawsuit on behalf of several thousand customers of a licensee who is alleged to have committed what appears to be a technical violation which did not harm anyone. Under the present wording of the section, if the class action is certified and the violation proven, the court might have no alternative but to award the minimum \$500 for each class member, which would result in a windfall for the attorney and the class members, but could be devastating to the licensee.

Section 245.07, Florida Statutes, imposes a duty on counties to bury or cremate the remains of all persons whose bodies are unclaimed. Counties are restricted to burial or cremation within the boundaries of the county. A funeral director who cremates remains at the request of the county is immune from liability, but a cemetery company is not.

A study by the Board in 1992 showed that there are more than 2,000 abandoned cemeteries in the state which have no identifiable person in charge to perform care and maintenance. Such locations can create burdens on local governments which agree to repair vandalism damages or assume care and maintenance responsibilities, and also represent the loss of valuable historical and genealogical information.

B. EFFECT OF PROPOSED CHANGES:

HB 3763 provides a general definition of care and maintenance, and directs the Board of Funeral and Cemetery Services to make rules spelling out in greater detail the responsibilities of licensed cemeteries regarding minimum levels of care and maintenance. These new rules must be in place by July 1, 1999.

The bill adds a provision to s. 497.229 F.S., authorizing the use of the 'nuisance abatement' remedy under s. 60.05, F.S. to address violations of ch. 497 F.S. and the Board's rules which impact on the physical aspects of operating a cemetery or in mausoleum construction.

The bill amends present s. 497.253 F.S. dealing with a cemetery removing the dedicated status from, and selling a portion of, its land by imposing additional requirements for Department approval when the land to be sold has been used for the interment of human remains (the human remains must have been relocated, with permission of an authorized person, before approval for the sale may be given). In such a case, public notice must be given in local newspapers, and persons who wish to object to the application may request a public hearing pursuant to ch. 120 F.S. If such a hearing is requested and held, the Department must consider evidence presented by the parties concerning specified factors and may grant the application when it would not be contrary to the public interest. Notice must be recorded in the deed conveying the land that it has been used for cemetery purposes. If the land has never been used for burials, then no public notice or public hearing is required before the Department considers the application. The Department is empowered to make rules carrying out this section.

The bill adds a new section, 497.255, F.S. imposing a requirement that all newly constructed or significantly renovated mausoleums and columbaria must meet construction standards set out in rules of the Board after approval by the Board of Building Codes and Standards. The approved standards are incorporated into the state minimum building codes and enforced by local building officials. These standards must encompass specified requirements aimed at assuring that mausoleums are durable and permanent, in accordance with modern mausoleum construction and engineering science. Significant renovations or alterations of existing mausoleums and columbaria must also meet the standards. If the construction follows the new standards and uses non-combustible materials, the structure will be exempt from requirements to have sprinkler systems. The Board's rulemaking for the construction standards must be completed by July 1, 1999. The Board is also to make rules requiring that all crypts and niches, both in new mausoleums and existing ones, must be securely and permanently sealed after human remains have been placed therein.

The bill amends s. 497.257 F.S. by adding the same requirement for preconstruction trust funds for newly constructed columbaria as now apply to newly constructed mausoleums.

The bill amends s. 497.527 F.S. by making it clear that the Attorney General may file suit to enforce chapter 497 F.S. Suit may be filed in the court having jurisdiction over the relief sought, whether circuit or county court. Minor violations, designated as such by Board rule, will still be subject to minimum damages of \$500, but more serious violations will result in minimum damages of \$1,000.

The bill upgrades cemetery vandalism from a first degree misdemeanor to a third degree felony, and upgrades disturbing the contents of a grave or tomb from a third to a second degree felony. The term "grave" is defined to include any mausoleum, columbarium, or crypt.

Section 245.07, Florida Statutes, is amended to allow a board of county commissioners to delegate their responsibility to bury or cremate unclaimed bodies, and to allow such dispositions to take place outside the boundaries of the county. Licensees under ch. 497 F.S. are given the same immunity from civil liability for cremating remains at the request of the county as funeral directors now enjoy.

The bill creates a Task Force on Abandoned and Neglected Cemeteries within the Department of Banking and Finance, made up of eleven members appointed by the Comptroller and representing various groups or classes of parties having an interest in the problem. The members serve without pay, but are compensated for travel and per diem. The Task Force is to study enumerated problems and possible solutions concerning abandoned and neglected cemeteries, and prepare a preliminary report by December 1, 1998, and a final report by January 15, 1999 with findings and recommendations.

The bill contains an appropriations clause without an amount specified; the Department has indicated that they will need approximately \$131,000 in the next fiscal year to implement the bill.

The effective date of the bill is July 1 of the year in which enacted, except that the requirements to comply with the new standards do not take effect until the rules implementing those requirements have been adopted. The section creating the Task Force takes effect upon becoming law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes, the Board of Funeral and Cemetery Services is empowered to make necessary rules to carry out the Act. Also, the Department will participate in any public hearing which might be requested with respect to the sale of dedicated cemetery land.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes, licensees of the Board will have to comply with the requirements of the rules concerning care and maintenance and mausoleum construction, if they are not already utilizing standards as high or higher than those set under the new rules. The Board of Building Codes and Standards will assist the Board of Funeral and Cemetery Services in developing and promulgating the mausoleum construction standards. The persons appointed to the Task Force will work toward the goals of the Task Force. Elements of the criminal justice system may be impacted by the higher criminal penalties. The civil justice system may be impacted by litigation brought by persons utilizing the civil remedies contained in the bill.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No, local governments already have the authority to charge fees for building permits and inspections.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No, except to the extent that the public is the beneficiary of the protections afforded by the bill, and licensees will pass on their costs of compliance with the bill to their customers.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill will increase the minimum standards that licensees will have to comply with, so in that sense the bill interferes with presently lawful performance below the minimum standards.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION RESEARCH:

Section 1.

The bill is cited as the "Cemetery Preservation and Consumer Protection Act."

Section 2.

Amends section 497.005, Florida Statutes, to establish a comprehensive definition of "care and maintenance" as that term relates to a cemetery and its lots, graves, grounds, crypts, mausoleums, columbaria, etc. The term includes mowing the grass, suppression of weeds, upkeep, repair, machinery, overhead expenses, restoration and destruction of cemeteries.

Section 3.

Creates s. 497.0255, F.S., to require every licensed cemetery to ensure that cemeteries are well cared for and maintained. It mandates that the Board of Funeral and Cemetery Services (Board) promulgate rules by July 1, 1999, to implement and enforce this section.

Section 4.

Amends s. 497.229, F.S., to state that any cemetery which is constructed, physically operated, or maintained in violation of the provisions of this chapter or rules of the Board, shall be deemed a public nuisance under s. 60.05 (Injunction law). As such, the Attorney General or any state attorney, county, city or citizen may sue to abate the nuisance.

Section 5.

Amends s. 497.253, F.S., to modify the procedures that a licensed cemetery must follow if it wishes to sell lands within the cemetery, if the land in question has ever been used for interment of human remains. In that case, the licensee must give public notice and possibly undergo a public hearing to seek approval for the sale. The human remains must be relocated, with permission of an authorized person, before approval of the sale. If the land in question has never been used for interments, then no public notice or hearing will be required before the Department of Banking and Finance (Department) approves or denies the sale. The bill provides for criteria to be considered by the Department prior to approving the sale. There must be a notice in the recorded deed notifying the public that the land has previously been used for burials.

Section 6.

Creates s. 497.255, F.S., to authorize the Board to establish rules by July 1, 1999, as to the minimum standards for the construction and significant renovation of mausoleums and columbaria to assure their durability and permanence. The rules would then become part of the statewide building code after being approved and promulgated by the Board of Building Codes and Standards of the Department of Community Affairs..

Section 7.

Amends s. 497.257, F.S., to add the term "columbaria" into the section requiring preconstruction trust funds for mausoleums. "Columbarium" is defined as a vault with niches for cremated remains.

Section 8.

Amends s. 497.527, F.S., to add the Attorney General to the provision which allows any person to bring a civil action against a person or company violating the provisions of this chapter. Increases the civil damages under the chapter from \$500 to \$1,000, and provides for \$500 in damages for designated minor violations of a Board rule.

Section 9.

Amends s. 872.02, F.S., to increase the penalty for defacing or otherwise vandalizing a tomb or monument from a first degree misdemeanor to a third degree felony. Increases the penalty for grave robbing from a third to a second degree felony. Clarifies that the word "tomb" includes any mausoleum, columbarium or below ground crypt.

Section 10.

Amends s. 245.07, F.S., allows counties to bury or cremate unclaimed bodies outside the county boundaries.

Section 11.

Creates an 11-member Task Force on Abandoned and Neglected Cemeteries to be appointed by the Comptroller to study the problem of the 2,000 abandoned and neglected cemeteries in the state and make recommendations in a report to the Legislature by January 15, 1999.

Section 12.

Authorizes an unspecified appropriation to the Department from the Department's Regulatory Trust Fund to carry out the purposes of the act.

Section 13.

Provides an effective date of July 1, 1998, however, certain provisions of the act will not take effect until the Board promulgates specified rules.

IV. Constitutional Issues:

None.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Banking and Finance estimates that there will be \$51,000 of non-recurring expenses next year related to the Task Force. The Department of Community Affairs will divert an indeterminate amount of staff time to assisting the Board of Funeral and Cemetery Services in developing and promulgating the mausoleum construction standards. The Department of Community Affairs has not yet provided a fiscal impact statement on this bill.

2. Recurring Effects:

The Department of Banking and Finance estimates that there will be \$80,042 of recurring expenses per year over the next three years. Law enforcement, the courts, and corrections may be slightly impacted by the increased criminal penalties. A fiscal impact conference will consider the impact of this bill April 9, but staff preliminarily are of the opinion that the effect will be insignificant.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Local governments will nominate members to the Task Force, who will be reimbursed for travel and per diem only.

2. Recurring Effects:

Local governments will incur some expense in processing building permits under the new standards, but there are so few newly constructed mausoleums in any locality that the effect is expected to be minimal, and the local government could increase its permit fees, or classify mausoleum construction applications in another category, to recoup any extra expense.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Depending on their present standards, some licensees may incur additional costs in their care and maintenance activities and mausoleum construction projects to comply with the new standards when they become effective in July 1999. Members of the private sector will serve on the Task Force without compensation.

2. Direct Private Sector Benefits:

Consumers should benefit from the improved services and facilities brought about by compliance with this bill. There will be a more level "playing field" resulting from the minimum standards promulgated in the new rules, since marginal operators will not be able to gain an economic advantage over their competitors by providing minimal care and maintenance, or by using inferior building materials or techniques.

3. Effects on Competition, Private Enterprise and Employment Markets:

Since all licensed cemeteries will have to comply with the new rules, it is expected that there will be no significant effect on these factors. See preceding comment.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Real Property & Probate adopted a strike-everything amendment which is traveling with the bill. The strike everything differs from the bill as follows:

The amendment adds language to Section 3 of the bill, which creates section 497.0255, Florida Statutes. The new language clarifies the rulemaking authority of the Board of Funeral and Cemetery Services to create different classes of cemeteries, with different rules to apply to each class, if justified by evidence presented to the Board.

The amendment changes language in Section 4 of the bill, which adds subsection (3) to section 497.229, F.S. The changed language clarifies that the remedy obtained by use of the "public nuisance" statute is limited to correcting the physical conditions created by a violation of Ch. 497 F.S. or the rules of the Board.

The amendment adds language to Section 5 of the bill, to clarify that the requirements of public notice, public hearings, and recorded deed notices apply only to lands proposed for sale by a cemetery company which have previously been used for burials. The amendment also reorganizes subsections and corrects cross references.

The amendment adds language to Section 6 of the bill, which creates section 497.255, Florida Statutes. The new language clarifies the rulemaking authority of the Board of Funeral and Cemetery Services to create different classes of structures or construction standards, with different rules to apply to each class, if justified by evidence presented to the Board. The amendment also deletes references to the word "cell" in the bill, since that word is not used as a synonym for "crypt" or "niche" in Florida.

The amendment also adds language to s. 497.255(2)d, F.S., in Section 6 of the bill. The new language provides that mausoleums or columbaria which are constructed of non-combustible materials are exempt from requirements of fire-suppressing sprinkler systems. The amendment also adds a new subsection (5) to s. 497.255 F.S. The new language defines the term "significant alteration or renovation" to mean any addition, renovation or repair which results in the creation of new crypt or niche spaces.

The amendment adds a new Section 8 to the bill, which amends s. 497.417 F.S., by deleting paragraph (4)(b). The deleted language allowed the trustee of a preneed trust to invest in life insurance policies or annuity contracts.

The amendment adds a new Section 9 to the bill, repealing subsection (12) of s. 497.429 F.S. The deleted language required the trustee of one type of preneed trust to send an annual valuation to each customer.

The amendment changes language in Section 10 (formerly numbered as Section 8) of the bill. The changed language deletes references to minimum

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damages, and provides that the defendant shall be liable for the actual damages caused by a violation.

The amendment makes a technical amendment to Section 12 (formerly numbered as Section 10) of the bill, clarifying that immunity from liability is extended to licensees for burials, as well as cremations, performed at the request of a county.

The amendment changes language in one of the 'Whereas' clauses, deleting reference to "approximately 2,000" abandoned cemeteries, replacing it with "a large number of" abandoned cemeteries.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY AND PROBATE:

Prepared by:

Legislative Research Director:

John P. Ingle
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