

STORAGE NAME: h1405.fs

DATE: March 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 1405

RELATING TO: Funeral & Cemetery Services

SPONSOR(S): Rep. Crist

COMPANION BILL(S): Related CS/S 0196

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

- (1) FINANCIAL SERVICES
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (3) COMMUNITY AFFAIRS
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
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I. SUMMARY:

This bill addresses the care and maintenance of unlicensed cemeteries and provides additional treatment for abandoned and neglected cemeteries by creating Part II of Chapter 497, F.S. (regulation of the funeral and cemetery services industry). Part I of that chapter is subsequently established to contain the current regulatory provisions. The bill stipulates that all new cemeteries created after July 1, 1999, must be licensed under Part I, but provides that unlicensed cemeteries existing on that date (with certain exceptions) may continue to operate subject to the provisions of Part II. The bill provides that all cemeteries except those licensed under Part I are subject to the provisions in Part II which require:

- Adherence to s. 497.309(1), F.S., relating to recordkeeping, s. 497.3321, F.S., relating to regulation of solicitation practices, s. 497.325, F.S., relating to illegal tying arrangements, s. 497.341, F.S., relating to discrimination and s. 497.345, F.S., relating to local government care of abandoned cemeteries;
- Certain care and maintenance standards be met, and care and maintenance programs be established by unlicensed cemeteries subject to personal liability of individual owners and officers of corporate owners;
- Access to all cemeteries by designated state and local officials for inspection purposes;
- Local governments to identify, preserve, and protect all neglected and abandoned unlicensed cemeteries within their jurisdictions;
- County court clerks to establish and maintain a registry of each cemetery in the county; and
- Surveyors to file a statement with court clerks as to the location of any unregistered cemetery discovered in the course of the surveyor's activity.

Part II also provides procedures for the declaration, disposition and treatment of abandoned and neglected unlicensed cemeteries. In both instances, local governments are to be held responsible for such cemeteries. In the case of neglected unlicensed cemeteries, local governments may seek financial remedies from the owners for maintenance costs. The Department of Banking and Finance is authorized to adopt rules to implement this part.

The term "abandoned cemeteries" is added to the list of eligible projects which may receive Historical Preservation Grant funds under Chapter 267, F.S., and funding for local government identification and maintenance of abandoned cemeteries is passed through the Communities Trust funds from punitive damages resulting from civil actions under Chapter 497, F.S., and from criminal mischief and other offenses relating to dead bodies and graves under s. 806.13, F.S. (1998 Supp.), and Chapter 872, F.S. The Florida Department of Law Enforcement estimates that there may be 5 convictions of this type per county per year. Consequently, FDLE indicates that the maximum amount the proposed funding source could net at the current rate of convictions would be \$30,000 annually, if all such offenses were felonies. The Department of Banking and Finance reports that no punitive damages have been assessed under Chapter 497, F.S. to date, and the department's costs to implement certain provisions would be \$5,000 in FY 1999/00, and \$2,000 in FY 2000/01.

Finally, the bill requires funeral and burial industry service providers to provide disclosures identifying the owner of the business. The disclosure must be made to prospective service or merchandise purchasers in all advertisements and contracts. The bill permits disciplinary action for failure to do so.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 497, Florida Statutes, provides regulation for the cemetery industry in Florida by the Department of Banking and Finance (DBF) and the Board of Funeral and Cemetery Services (board). This chapter primarily addresses the sales practices of licensees who offer pre and at-need burial products and services and the perpetual care and maintenance of those investments. Section 497.003, F.S., provides the following eight specific exemptions from the provisions of the chapter for certain church, civic, local government, and family cemeteries.

- Church cemeteries of less than 5 acres which provide only single-level ground burial.
- County and municipal cemeteries.
- Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise.
- Cemeteries owned and operated or dedicated by churches prior to June 23, 1976.
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.
- A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing church facility and is subject to local government zoning. (Insurance of perpetual care even in the event of relocation of the church is still required.)
- Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.
- A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing church or synagogue facility which has been incorporated for at least 25 years, has sufficient endowed funds to construct the mausoleum, and is subject to local government zoning. (Insurance of perpetual care is still required and availability is limited to members of the church or synagogue.)

Notwithstanding these exemptions, all cemeteries are subject to provisions in Chapter 497, F.S., relating to burial recordkeeping, solicitation practices, illegal tying arrangements, discrimination, and abandoned cemeteries. Additionally, exempted cemeteries of more than 5 acres are required to submit to investigation by the DBF and mediation in the event of a consumer complaint.

Sections 497.345 and 497.349, F.S., specifically provide for the care of abandoned and inactive cemeteries. Counties and municipalities are authorized to care for maintaining and securing abandoned cemeteries under s. 297.345, F.S., after notifying DBF of their intentions. Licensed cemeteries may surrender their licenses and be considered inactive if they comply with certain requirements. However, the trust funds held by the licensee for perpetual care and maintenance will remain intact and the funds disbursed to the cemetery on a regular basis for upkeep of the grounds.

Additionally, Chapter 872, F.S., provides for the protection of all human burials and associated artifacts not otherwise protected under Chapter 497, F.S. Penalties are provided for the disturbance of such burials and the state archaeologist is required to make reasonable efforts to identify and locate those with relationships to the buried individual to provide for proper disposition of the remains.

Criminal Penalties Related to Disturbing Dead Bodies and Graves

Currently, under Chapter 872, F.S., any person who pleads guilty or nolo contendere to, or is convicted of, criminal mischief and offenses (s. 806.13, F.S. (1998 Supp.)) concerning dead bodies and graves is subject to the following:

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OFFENSE	VIOLATION	PENALTY
Damage to property is \$200 or less	misdemeanor of the 2nd degree	s. 775.082 or s. 775.083
Damage to property is more than \$200, but less than \$1,000	misdemeanor of the 1st degree	s. 775.082 or s. 775.083
Damage to property is \$1,000 or greater or there is an interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore	felony of the 3rd degree	s. 775.082, s. 775.083, or s. 775.084
One or more previous convictions for violating this subsection	felony of the 3rd degree	s. 775.082, s. 775.083, or s. 775.084
Defacing, injuring, or damaging by any means any church, synagogue, mosque, or other place of worship, or any religious article and the damage to the property is greater than \$200.	felony of the 3rd degree	s. 775.082, s. 775.083, or s. 775.084

Additionally, under Chapter 872, F.S., any person who pleads guilty or nolo contendere to, or is convicted of offenses concerning dead bodies and graves is subject to the following:

OFFENSE	VIOLATION	PENALTY
Buying, selling, or having in a person's possession for the purpose of buying or selling or trafficking in the dead body of any human being	Misdemeanor of the 1st degree	s. 775.082 or s. 775.083.
Injuring or removing tomb or monument.	Felony of the 3rd degree	s. 775.082, s. 775.083, or s. 775.084
Disturbing contents of grave or tomb.	Felony of the 2nd degree	s. 775.082, s. 775.083, or s. 775.084
Cremating human bodies prior to the expiration of 48 hours after the death of such human body.	Misdemeanor of the 2nd degree	s. 775.082 or s. 775.083
Any person who willfully and knowingly disturbs, destroys, removes, vandalizes, or damages an unmarked human burial.	Felony of the 3rd degree	s. 775.082, s. 775.083, or s. 775.084
Any person who has knowledge that an unmarked human burial is being disturbed, vandalized, or damaged and fails to notify the local law enforcement agency with jurisdiction in the area where the unmarked human burial is located.	Misdemeanor of the 2nd degree	s. 775.082 or s. 775.083
Any person who mutilates, commits sexual abuse upon, or otherwise grossly abuses a dead human body.	Felony of the 2nd degree	s. 775.082, s. 775.083, or s. 775.084

The Florida Department of Law Enforcement estimates that there may be 5 convictions of this type per county per year. Consequently, FDLE indicates that the maximum amount the proposed funding source could net at the current rate of convictions would be \$30,000 annually, if all such offenses were felonies.

Historic Property/Resource¹

Currently, abandoned cemeteries are not specifically considered historic property under Florida Statutes. However, over 300 cemeteries have been reported to the Division of Historical Resources of the Department of State and designated as historic property. Abandonment is not a criteria for such a designation. Sites that are determined to be "historic property" or a "historic resource" may be listed in the National Register of Historic Places and, subject to a classified use assessment by county governments which implement voluntary tax assessment programs, exempted from local property taxation up to 50 percent of the assessed value of property to the extent all criteria is satisfied by the local government (s. 196.1961, F.S.).

The Division of Historical Resources is authorized to adopt rules to implement provisions relating to historic properties by making and entering into any contract or agreement with other agencies, organizations, associations, corporations and individuals, or federal agencies. Some of the responsibilities of the division include the following:

- Directing and conducting a comprehensive statewide survey of historic resources and to maintain an inventory of such resources.
- Developing a comprehensive statewide historic preservation plan.
- Identifying and nominating eligible properties to the National Register of Historic Places and otherwise administer applications for listing historic properties in the National Register.
- Ensuring that historic resources are taken into consideration at all levels of planning and development.
- Advising and assisting, as appropriate, federal and state agencies and local governments in carrying out their historic preservation responsibilities and programs.
- Providing public information, education, and technical assistance relating to historic preservation programs.

Although not specified in statute, the Division of Historical Resources currently works with state agencies, local governments, and private organizations and individuals in identifying abandoned cemeteries. In addition, the Division submits semiannual grant applications in assisting the local governments in carrying out their historic preservation responsibilities and programs.

Regulatory Trust Fund²

The Regulatory Trust Fund, administered by the Department of Banking and Finance, consists of all funds received pursuant to mortgage brokerage/lending and mortgage brokers/lenders (Parts I, II and III of Chapter 494, F.S.) funeral and cemetery services (Chapter 497, F.S.), consumer finance (Chapter 516, F.S.), home improvement sales and finance and department regulation of sales and finance (Chapter 520, F.S.), or trading stamps (Part I of Chapter 559, F.S.). According to the department, funds from funeral and cemetery services have historically constituted approximately fifteen to twenty percent of the Regulatory Trust Fund. Of those funds, none have resulted from punitive damages³ of funeral and cemetery services.

¹"Historic property" or "historic resource" is defined as any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value, and folklife resources, which include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, and culture of the state (s. 267.021(3), F.S. (1998 Supp.)).

²s. 215.321, F.S.

³s. 497.527, F.S.

Florida Communities Trust Fund⁴

The Florida Communities Trust, a nonregulatory state agency of the Department of Community Affairs, administers the Florida Communities Trust Fund. The fund is a nonlapsing, revolving fund for projects, activities, acquisitions, and operating expenses that may not become or be commingled with the General Revenue Fund of the state. With the intent that conservation of natural areas is vital to the state's economy and ecology, the primary purpose of the fund is to protect the natural resources and environment of Florida. The following is an example of revenue and expenditure sources and amounts for the fund during FY 97-98:

REVENUE SOURCE	REVENUE AMOUNT	EXPENDITURE SOURCE	EXPENDITURE AMOUNT
Receipts from DHSMV (i.e., Florida Panthers license plates)	\$502,638.17	Salaries & benefits	\$506,239.66
Interest from investments	99,322.63	Other personnel services	132,255.69
Refunds from vendors	810.76	Operating capital outlay	24,898.64
		Expenses	107,153.83
		Indirect costs	33,457.72
		Service charge to GR	202,092.51
TOTAL REVENUE	\$602,771.56	TOTAL EXPENDITURE	\$1,006,098.05

Funds authorized by statute to be credited to or deposited in the Florida Communities Trust Fund include the following:

- Moneys and revenue from the operation, management, sale, lease, or other disposition of land, water areas, related resources, and the facilities thereon acquired or constructed under this part.
- Moneys accruing to any agency for the purposes listed in this part.
- Proceeds from the sale of environmental license plates.
- Other moneys as the Legislature authorizes.

The trust may be expended to acquire land, water areas, and related resources; to provide technical assistance to local governments to establish transfer of development rights programs within their jurisdictions; and to construct, improve, enlarge, extend, operate, and maintain capital improvements and facilities. Also, the trust may be expended to pay necessary expenses to carry such purposes⁵, for example:

- To provide technical and financial assistance to local governments, state agencies, water management districts, regional planning councils, and nonprofit agencies to carry out projects and activities and develop programs to achieve the purposes of this part.
- To acquire and dispose of real and personal property or any interest therein when necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide access for managing acquired lands, or otherwise carry out the purposes of this part.
- To acquire interests in land by means of land exchanges, and to enter into all alternatives to the acquisition of fee interests in land, including the acquisition of conservation easements, life estates, leases, and leaseback arrangements.

⁴s. 380.511, F.S.

⁵s 380.507, F.S.

- To conduct promotional campaigns, including advertising, for the sale of communities trust license plates authorized in s. 320.08058, F.S. (1998 Supp.)

Task Force on Abandoned and Neglected Cemeteries

In 1998, House Bill #3763 (98-268) created a Task Force on Abandoned and Neglected Cemeteries within the Department of Banking and Finance. The task force was charged to examine the extent to which some cemeteries in the state are abandoned and therefore have no existing responsible person or entity in charge, or are neglected and therefore are not receiving adequate care and maintenance. The task force study enumerated problems and possible solutions concerning abandoned and neglected cemeteries, and prepared a final report.

In general, the task force findings suggest that a significant portion (40 to 50%) of the large number of unlicensed cemeteries (3413) are to some degree neglected or abandoned. Additionally the task force indicates that local government resources are inadequate to identify and care for these cemeteries and that without such care, the dignity and historical value of the burial sites could be lost to vandalism and neglect. Consequently, the task force developed legislation which would establish guidelines, definitions, methods of establishing care for neglected and abandoned cemeteries, agencies responsible for administering care, and a permanent entity to continue the identification, protection, preservation and maintenance of such cemeteries. The task force recommended a one-time \$5 M appropriation to fund this legislative initiative.

Senate Interim Project Report 98-39

During the 1998-99 interim, staff of the Senate Regulated Industries Committee conducted a study on funeral and cemetery regulation. The report indicates that global corporations are acquiring increasingly greater shares of the funeral and cemetery services market. The consolidation of the funeral and cemetery industry in Florida has been characterized as "creeping expansion" whereby a larger corporation buys one small or independent business at a time until the corporation's acquisitions represent a substantial presence in a region.

When a larger corporation acquires or merges with an established business, it may continue to operate under the former business name, often with the same staff, and at times with the prior owner acting as manager for a transition period. Consequently, consumers seeking to comparison shop may not be aware that prices obtained from different establishments may be under the purview of the company owning those establishments. The report contends that unique circumstances surrounding the purchase of funeral and cemetery services and products may warrant explicit disclosure requirements regarding corporate ownership on letterhead, contracts, signs or advertisements so that consumers can make informed decisions about whether and from whom they purchase funeral and cemetery services and products.

An additional concern identified in the report is the potential for anti-competitive effects in the funeral and burial service and merchandise industry. Individual buy-outs which involve a small amount of assets do not automatically trigger any federal or state anti-trust laws. Currently, neither the Department of Business and Professional Regulation nor the Department of Banking and Finance is required to collect comprehensive data in a manner that would verify geographical presence and market share of large death care corporations in Florida. The report indicated that more data collection and research by the respective regulatory agencies would help to determine whether or not a monopoly environment does exist in the state, and whether it may be reducing the variety and quality of available services or causing higher costs to consumers.

Public Information on Business Ownership

Currently, a licensee offering to provide burial rights, merchandise, or services to the public must adhere to the provisions of s. 497.333, F.S., regarding information to the public. Licensees are required to:

- Provide by telephone, upon request, accurate information regarding the retail prices of burial merchandise and services offered for sale by the licensee;
- Fully disclose all regularly offered services and merchandise prior to the selection of burial services or merchandise, including the prices of all burial rights, services, and merchandise provided by the licensee;

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- Refrain from making any false or misleading statements of the legal requirement as to the necessity of a casket or outer burial container;
- Provide a good faith estimate of all fees and costs the customer will incur to use any burial rights, merchandise, or services purchased;
- Provide to the customer, upon request, a current copy of the bylaws of the licensee;
- Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract, the form of which has been approved by the board;
- Provide the licensee's policy on cancellation and refunds to each customer; and
- Provide in a manner established by rule of the board, on the signature page, clearly and conspicuously in boldfaced 10-point type or larger, some of the following: The words "purchase price," the amount to be trusted, and the amount to be refunded upon contract cancellation.

However, a licensee offering to provide burial rights, merchandise, or services to the public is subject to disciplinary action if the licensee, in violation of s. 470.034, F.S.;

1. Fails to reasonably provide by telephone, upon request, accurate information regarding the retail prices of funeral merchandise and services offered for sale by that licensee or registrant;
2. Fails to fully disclose all of her or his available services and merchandise prior to the selection of a casket, including identification of what is included in the funeral or direct disposition and the prices of all services and merchandise provided by the licensee or registrant. (Full disclosure must also be made in the case of a funeral or direct disposition with regard to the use of funeral merchandise which is not to be disposed of with the body, and written permission must be obtained from the purchaser.);
3. Makes any false or misleading statements of the legal requirement as to the conditions under which preservation of a dead human body is required or as to the necessity of a casket or outer burial container; or
4. Fails to disclose, when such disclosure is desired, the components of the prices for alternatives.

Presently, Florida law does not require disclosure to the public of any information as to ownership of funeral establishments, direct disposal establishments, cinerator facilities, or cemeteries.

Agency Information on Business Ownership - Changes in Ownership

Section 497.201, F.S., provides for establishing and licensing a cemetery. A person seeking to establish and operate a cemetery must first obtain a license from the Department of Banking and Finance. To obtain the license, the person must file a license application, the only content requirement for which is that it state the exact location of the proposed cemetery, and must provide a financial statement signed by all officers of the company.

Section 497.213, F.S., requires that an application for license renewal be made on or before December 31 of each year in the case of an existing cemetery company, or before any sale of cemetery property in the case of a new cemetery company or a change of ownership.

Similar statutes on licensing of funeral establishments and direct disposal establishments and on registration of incinerator facilities require that these businesses identify the owner of the establishment or facility in the license application. These statutes require that each application for a license identify every person who owns more than a 10% interest in the establishment or the business or corporation that owns the establishment. See ss. 470.024(13) (1998 Supp.), 470.021(6), and 470.025(10), F.S., respectively.

As to changes in ownership, section 497.205(2), F.S., requires that any person who wishes to purchase or acquire control of an existing licensed cemetery apply to the Board of Funeral and Cemetery Services for approval of the proposed change in ownership. The statutes on funeral establishments, direct disposal establishments, and cinerator facilities require reporting of a change in ownership, at ss. 470.024(11) (1998 Supp.), 470.021(8), and 470.025(4), F.S., respectively.

B. EFFECT OF PROPOSED CHANGES:

This bill addresses the care and maintenance of unlicensed cemeteries and provides additional treatment for abandoned and neglected cemeteries by creating Part II of Chapter 497, F.S. (regulation of the funeral and cemetery services industry). Part I of that chapter is subsequently established to contain the current regulatory provisions. The bill stipulates that all new cemeteries created after July 1, 1999, must be licensed under Part I, but provides that unlicensed cemeteries existing on that date (with certain exceptions) may continue to operate subject to the provisions of Part II. The bill provides that all cemeteries except those licensed under Part I are subject to the provisions in Part II which require:

- Adherence to s. 497.309(1), F.S., relating to recordkeeping, s. 497.3321, F.S., relating to regulation of solicitation practices, s. 497.325, F.S., relating to illegal tying arrangements, s. 497.341, F.S., relating to discrimination and s. 497.345, F.S., relating to local government care of abandoned cemeteries;
- Certain care and maintenance standards be met, and care and maintenance programs be established by unlicensed cemeteries subject to personal liability of individual owners and officers of corporate owners;
- Access to all cemeteries by designated state and local officials for inspection purposes;
- Local governments to identify, preserve, and protect all neglected and abandoned unlicensed cemeteries within their jurisdictions;
- County court clerks to establish and maintain a registry of each cemetery in the county; and
- Surveyors to file a statement with court clerks as to the location of any unregistered cemetery discovered in the course of the surveyor's activity.

Part II also provides procedures for the declaration, disposition and treatment of abandoned and neglected unlicensed cemeteries. In both instances, local governments are to be held responsible for such cemeteries. In the case of neglected unlicensed cemeteries, local governments may seek financial remedies from the owners for maintenance costs. The bill provides that any citizen may submit the names and locations of cemeteries to the clerk of the court for entry into the cemetery registry, and burials of an abandoned cemetery containing fewer than 20 burials may be transferred to another abandoned cemetery if the cemetery is located in the path of imminent development, has no historical significance at the developer's expense. The Department of Banking and Finance is authorized to adopt rules to implement this part.

Historic Property/Resource

The bill adds abandoned cemeteries to the definition of "historic property" or "historic resource," under s. 267.021, F.S. (1998 Supp.). Inclusion in this definition could allow abandoned cemeteries, subject to the additional criteria under s. 196.1961, F.S., to take advantage of the ad valorem tax exemption available under this section.

Additionally, the bill requires that the Division of Historical Resources of the Department of State work with state agencies, local governments, and private organizations and individuals in identifying abandoned cemeteries and submitting semiannual grant applications pursuant to s. 267.0617, F. S., to assist local governments in carrying out their historic preservation responsibilities and programs.

Regulatory Trust Fund

This bill provides that any punitive damages which may currently be recovered by the Attorney General for offenses committed and adjudicated under Chapter 497, F.S., will be deposited into the Florida Communities Trust Fund instead of the Regulatory Trust Fund.

Florida Communities Trust Fund

The bill authorizes the Florida Communities Trust to give annual notice to city managers and county administrators of available funding for maintenance of abandoned cemeteries, consisting of information pertaining to trust programs, including information that funds are available for the identification and maintenance of abandoned cemeteries, eligibility requirements for receiving trust funds under this part, information regarding matching dollar grants to local governments and nonprofit organizations for the purposes set forth in s. 380.511(2), F.S., requests for proposals, and potential

moneys available for abandoned cemeteries under the Historical Preservation Grant Program set forth in Chapter 267, F.S.

This bill requires an additional annual report submitted to the Board of Funeral and Cemetery Services documenting the amount of funds received and authorized by the Legislature, the amount of such funds spent, and the recipients of the funds so spent.

Criminal Mischief Concerning Dead Bodies and Graves

Those found liable for criminal mischief and offenses concerning dead bodies and graves will be required to pay an additional cost in, in addition to any other cost required to be imposed by law, in the sum of \$100 for a felony and \$50 for a misdemeanor. Such funds collected will be deposited into the Florida Communities Trust Fund.

Additionally, the bill includes the new provisions of Part II under the references in s. 470.019, F.S., which provides disciplinary procedures, relating to funeral directors and providers of funeral services and merchandise.

Public Information on Business Ownership

Licenses and registrants under Chapter 470, relating to funeral directors, funeral home establishments, and direct disposers, are required by the bill to provide disclosures identifying the owner of the business. The disclosure: must be made to a prospective purchaser of merchandise or services before a purchase; must be made in all advertisements for merchandise or services; and must be included in each contract for sale of merchandise or services. The disclosures must be clear and conspicuous. Failure to provide a disclosure is made grounds for disciplinary action. Additionally, if a contract does not contain the required disclosure, it is voidable by the purchaser. The bill's definition of the term "owner" includes, but is not limited to, a publicly traded corporation owning more than 10 percent of a licensee or registrant which will provide the merchandise or services.

Further the bill requires sellers of burial rights, merchandise, or services to give notice to prospective purchasers of the ownership of the business providing the rights, merchandise, or services; require disclosures in advertisements and contracts; and provide for voidability of contracts. The bill permits disciplinary action for failure to do so.

Agency Information on Business Ownership

The bill requires each application for a license to operate a cemetery or for a license renewal to identify the business or corporation that owns or will own the cemetery.

Agency Processing of Consumer Complaints

Finally, the bill requires the Department of Business and Professional Regulation, the Department of Banking and Finance, and the Department of Agriculture and Consumer Services to coordinate the method in which they keep records of and report data on consumer complaints about the funeral and cemetery industries. In particular, the agencies are to coordinate the categories of complaints and the format used to organize the data.

The bill takes effect on October 1, 1999.

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?

The Department of Banking and Finance is provided rulemaking authority to implement the newly created part II of Chapter 497.

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

Yes.

A. The Florida Communities Trust of the Department of Community Affairs is authorized to give annual notice to local administrators of available funding for abandoned and neglected cemeteries entailing contractual administration and oversight;

B. An additional report to the Board of Funeral and Cemetery Services must also be provided;

C. The Department of State's Division of Historical Resources is required to work with state agencies, local governments, and private organizations and individuals in identifying abandoned cemeteries and submitting semiannual grant applications pursuant to s. 267.0617, F. S., to assist local governments in carrying out their historic preservation responsibilities and programs;

D. Local governments are required to take care and maintenance responsibility for abandoned and neglected cemeteries;

E. County court clerks are required to maintain registries for all cemeteries located within their jurisdictions;

F. Surveyors are required to file a statement with court clerks as to the location of any unregistered cemetery discovered in the course of the surveyor's activity;

G. Owners of unlicensed cemeteries must meet certain care and maintenance standards prescribed by law, must establish care and maintenance programs and must provide access to all cemeteries to designated state and local officials for inspection purposes; and

H. Funeral and burial industry service providers must provide disclosures identifying the owner of the business. The disclosure must be made to prospective service or merchandise purchasers in all advertisements and contracts.

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

Yes. Local governments would be able to access historic preservation grant funds for assistance in securing funds for caring for and maintaining abandoned cemeteries.

- 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?

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

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?

Yes. Landowners who discover abandoned or neglected cemeteries on their properties would have to meet statutorily prescribed care and maintenance standards and would have to establish care and maintenance programs and would be personally liable for failure to do so. Local governments would be required to properly maintain neglected cemeteries and could take action against the owners for compensation for related costs.

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:

Amends ss. 215.321, F.S., 245.07, F.S. (1998 Supp.), 267.021, F.S. (1998 Supp.), 267.061, F.S., 380.507, F.S., 380.511, F.S., 380.512, F.S., 470.002, F.S. (1998 Supp.), 470.019, F.S., 470.025, F.S., 470.027, F.S., 470.028, F.S., 470.034, F.S., 470.036, F.S. (1998 Suppl.), 497.001--004, F.S., 497.005, F.S. (1998 Supp.), 497.025, F.S., 497.101, F.S., 497.103, F.S. (1998 Supp.), 497.105, F.S. (1998 Supp.), 497.119, F.S., 497.123, F.S., 497.125, F.S., 497.127, F.S., 497.129, F.S., 497.131, F.S., 497.133, F.S., 497.135, F.S., 497.137, F.S., 497.201, F.S., 497.205, F.S., 497.209, F.S., 497.213, F.S., 497.229, F.S. (1998 Supp.), 497.233, F.S., 497.237, F.S., 497.245, F.S., 497.253, F.S. (1998 Supp.), 497.257, F.S. (1998 Supp.), 497.301, F.S., 497.309, F.S., 497.329, F.S., 497.333, F.S., 497.337, F.S., 497.353, F.S., 497.357, F.S., 497.361, F.S., 497.401, F.S., 497.403, F.S., 497.405, F.S., 497.407, F.S., 497.413, F.S., 497.415, F.S., 497.417, F.S. (1998 Supp.), 497.419, F.S., 497.423, F.S., 497.427, F.S., 497.429, F.S. (1998 Supp.), 494.431, F.S., 497.435, F.S., 497.439, F.S., 497.441, F.S., 497.443, F.S., 497.447, F.S., 497.515, F.S., 497.517, F.S., 497.519, F.S., 497.525, F.S., 497.527, F.S. (1998 Supp.), 497.529, F.S., 497.531, F.S., 501.022, F.S., 501.604, F.S., 626.785, F.S., 872.02, F.S. (1998 Supp.), and 872.05, F.S.

Creates ss. 497.601 -- 497.609, F.S., 497.611 -- 497.619, F.S., 497.621 -- 497.623, F.S., and 938.08, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates Part II of chapter 497, F.S. (sections 497.601 -- 497.609, 497.611 -- 497.619 and 497.621--497.623), the "Neglected, Abandoned, and Unlicensed Cemetery Act":

- Providing legislative findings and intent,
- Providing for retention of status as a cemetery,
- Providing exemptions,
- Providing for applicability of specified provisions of Part I,
- Providing for investigation and mediation,
- Providing conversion procedures,
- Requiring licenses under Part I for certain activities,
- Providing for care and maintenance,
- Providing for joint and severable liability,
- Providing for ingress and egress,
- Providing a definition of "local government,"
- Providing local government responsibilities,
- Providing procedures for declaring an unlicensed cemetery abandoned,
- Providing for declaration of an unlicensed cemetery as neglected,
- Providing for private contracts,
- Requiring a county registry of cemeteries,
- Requiring surveyors to file a statement of cemetery location under certain circumstances,
- Providing for citizen input in the county registry,
- Providing for transfer of small cemeteries under certain circumstances, and
- Providing rulemaking authority to the Department of Banking and Finance to implement the act.

Section 2. Amends s. 215.321, F.S., providing an exception to the deposit of certain funds into the Regulatory Trust Fund.

Section 3. Amends s. 267.021(3), F.S. (1998 Supp.), adding abandoned cemeteries to the term "historic property" or "historic resource."

Section 4. Amends s. 267.061, F.S., specifying responsibility of the Division of Historic Resources with respect to identifying abandoned cemeteries and submitting grant applications for historic preservation purposes.

Section 5. Amends s. 380.507, F.S., requiring the Florida Communities Trust to give annual notice to city managers and county administrators of available funding for maintenance of abandoned cemeteries.

Section 6. Amends s. 380.511, F.S., providing for deposit of certain moneys into the Florida Communities Trust Fund, specifying appropriation of funds and uses of such moneys related to abandoned and neglected cemeteries, including 10 percent to be used for the administration of this requirement.

Section 7. Amends s. 380.512, F.S., requiring the trust to prepare and submit an annual report to the Board of Funeral and Cemetery Services on such moneys and their subsequent use.

Section 8. Amends s. 497.527, F.S. (1998 Supp.), providing for deposit of punitive damages related to offenses committed under Chapter 497, F.S., into the Florida Communities Trust Fund for specified purposes.

Section 9. Creates s. 938.08, F.S., providing for assessment of additional costs in cases involving criminal mischief and offenses concerning dead bodies and graves. And providing for disposition of funds collected.

Section 10. Amends s. 470.034, F.S., requiring licensees and registrants of funeral services and merchandise to give notice to prospective purchasers of the ownership of the business providing the merchandise of services; requiring disclosures in advertisements and contracts; and providing for voidability contracts.

Section 11. Amends s. 497.201, F.S., requiring each application for a license to operate a cemetery or to identify the business or corporation that owns or will own the cemetery.

Section 12. Amends s. 497.213(2), F.S., requiring each application for a license renewal to operate a cemetery to identify the business or corporation that owns or will own the cemetery.

Section 13. Amends s. 497.333, F.S., requiring sellers of burial rights, merchandise, or services to give notice to prospective purchasers of the ownership of the business providing the rights, merchandise, or services; requiring disclosures in advertisements and contracts; and providing for voidability of contracts.

Section 14. Requires the Department of Business and Professional Regulation, the Department of Banking and Finance, and the Department of Agriculture and Consumer Services to coordinate the method in which they keep records of and report data on consumer complaints about the funeral and cemetery industries. In particular, the agencies are to coordinate the categories of complaints and the format used to organize the data.

Sections 15 to 82. Amend ss. 245.07, F.S. (1998 Supp.), 470.002, F.S. (1998 Supp.), 470.019, F.S., 470.025, F.S., 470.027, F.S., 470.028, F.S., 470.036, F.S. (1998 Supp.), 497.001, F.S., 497.002, F.S., 497.003, F.S., 497.004, F.S., 497.005, F.S. (1998 Supp.), 497.025, F.S., 497.101, F.S., 497.103, F.S., 497.105, F.S. (1998 Supp.), 497.119, F.S., 497.123, F.S., 497.125, F.S., 497.127, F.S., 497.129, F.S., 497.131, F.S., 497.133, F.S., 497.135, F.S., 497.137, F.S., 497.205, F.S., 497.209, F.S., 497.229, F.S. (1998 Supp.), 497.233, F.S., 497.237, F.S., 497.245, F.S., 497.253, F.S. (1998 Supp.), 497.257, F.S. (1998 Supp.), 497.301, F.S., 497.309, F.S., 497.329, F.S., 497.337, F.S., 497.353, F.S., 497.357, F.S., 497.361, F.S., 497.401, F.S., 497.403, F.S., 497.405, F.S., 407.407, F.S., 497.413, F.S., 497.415, F.S., 497.417, F.S. (1998 Supp.), 497.419, F.S., 497.423, F.S., 497.427, F.S., 497.429, F.S. (1998 Supp.), 497.431, F.S., 497.435, F.S., 497.439, F.S., 497.441, F.S., 497.443, F.S., 497.447, F.S., 497.515, F.S., 497.517, F.S., 497.519, F.S., 497.525, F.S., 497.529, F.S., 497.531, F.S., 501.022, F.S., 501.604, F.S., 626.785, F.S., 872.02, F.S. (1998 Supp.), 972.05, F.S., correcting references, to conform.

Section 83. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

According to the Department of Banking and Finance, there will be no perceptible cost as it pertains to abandoned and neglected cemeteries. However, the Department will have to review and approve approximately 500 pre need contracts as it pertains to the declaration of ownership of cemeteries and funeral establishments. The following costs are projected in review of the contracts:

Year 1: FY99-00	Year 2: FY00-01	Year 3: FY01-02
\$5,000	\$2,000	0

2. Recurring Effects:

The Department of Banking and Finance projects an effect of an indeterminate amount for coordinating the complaint data bases. And the Department of State's Division of Historic Resources projects no effect for including abandoned cemeteries as historic property.

The Florida Communities Trust of the Department of Community Affairs is authorized to give annual notice to local administrators of available funding for abandoned and neglected cemeteries entailing contractual administration and oversight. An additional report to the Board of Funeral and Cemetery Services must also be provided. These costs are indeterminate at this time.

The Florida Department of Law Enforcement estimates that there may be 5 convictions of this type per county per year. Consequently, FDLE indicates that the maximum amount the proposed

funding source could net at the current rate of convictions would be \$30,000 annually, if all such offenses were felonies. The Department of Banking and Finance reports that no punitive damages have been assessed under Chapter 497, F.S. to date.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

<u>Expenses</u>	<u>1999/00</u>	<u>2000/00</u>
Regulatory Trust Fund	(\$5,000)	(\$2,000)

Revenues

Florida Communities Trust Fund

Indeterminate Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The Department of Banking and Finance and the Florida League of Cities, Inc., have determined an effect of an indeterminate amount upon local governments for the establishment and maintenance of a cemetery registries within the counties. Citizens may be charged for copies of the registry.

2. Recurring Effects:

Costs for the maintenance of abandoned cemeteries by local governments may increase of an indeterminate amount as more abandoned cemeteries are identified. Costs will be recouped from the Florida Communities Trust and owners of private neglected cemeteries.

3. Long Run Effects Other Than Normal Growth:

The Department projects minimal long-run costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Licenses will be required to amend pre need contracts, advertising, and brochures for notification of ownership. Owners private cemeteries will be required to maintain their cemeteries.

2. Direct Private Sector Benefits:

The bill may assist consumers in identifying the true owner of businesses, which may facilitate consumers in obtaining price information from competing businesses.

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

Consumers of funeral and cemetery services and merchandise may be able to competitively price such more effectively by knowing which establishments are affiliated.

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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 require counties or municipalities to spend funds or to take an action requiring the expenditure of funds and would be a mandate under the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

The provisions in Part II which require all new cemeteries after July 1, 1999, to be licensed under Part I appear to be silent on whether the licensure exemptions included in that part would still be applicable. Consequently the provisions of the bill appear to be inconclusive as to which cemeteries will be subject to the regulation and fees required under Part I.

The reference to funds collected under certain penalty statutes under Chapter 497, F.S., incorrectly references s. 497.257, F.S., the reference should be s. 497.527, F.S. (Page 17, line 16.)

The bill's assignment of personal civil liability to officers and directors of corporate owners of an unlicensed cemetery appears to be in conflict with the provisions of Chapter 617, F.S., which provide personal immunity to such persons for the actions of their corporations.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Susan F. Cutchins