

STORAGE NAME: h1435.fs

DATE: March 9, 1999

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

BILL #: HB 1435

RELATING TO: Funeral and Cemetery Services

SPONSOR(S): Representative Ritchie

COMPANION BILL(S): SB 1698 (S)

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

- (1) FINANCIAL SERVICES
- (2) BUSINESS REGULATION AND CONSUMER AFFAIRS
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

House Bill 1435 revises several references and general provisions in Chapter 497, F.S. This chapter establishes the Department of Banking and Finance's (DBF) regulatory authority over the cemetery and funeral service industry.

The reference to church affiliated cemeteries and other internment facilities is revised in Chapter 497, F.S., by creating a definition for "religious institution." This term is then substituted for the word "church" throughout the chapter. Additionally, the affiliation between the religious institution and the internment facility is established by the term ownership. However, the revised definition assigns the qualities of ownership to the religious physical facility as opposed to the religious organization.

Numerous provisions in Chapter 497, F.S., authorize the DBF's imposition and collection of a variety of regulatory fees from licensees. The statutes direct the DBF to deposit these fees into the Regulatory Trust Fund, which is referenced in a variety of ways within Chapter 497, F.S. The bill addresses this by revising the description of the Regulatory Trust Fund throughout the chapter to reflect the trust fund's placement under the Department of Banking and Finance.

The bill consolidates examination, application, and renewal fees for cemetery and funeral service providers regulated under Chapter 497, F.S., to conform the DBF's regulatory provisions for these licensees with the department's regulatory provisions for other financial services industries. In some instances, this consolidation has resulted in an increase in the application and renewal fees, but provides relief through elimination of the additional examination fees.

Finally, the bill requires the DBF to conduct a comprehensive review of Chapter 497, F.S., to examine a number of issues relating to promoting competition in the cemetery industry, streamlining the regulatory process provided by Chapter 497, F.S., and maintaining certain consumer protection safeguards. The DBF is required to conduct public workshops and file reports of its findings to the Legislature, the Governor and the Office of Program Policy Analysis and Government Accountability. To facilitate immediate action on this requirement, the bill provides that this provision will take effect upon the bill becoming law. Otherwise the effective date for provisions in the bill is July 1, 1999.

The bill provides an appropriation of \$115,000 to the DBF from the department's Regulatory Trust Fund for FY 1999/00, to carry out the provisions of the act.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 497, Florida Statutes, provides for the regulation of funeral and cemetery services by the Department of Banking and Finance (DBF) and the Board of Funeral and Cemetery Services (board) created within the DBF for that purpose. Both the DBF and the board are authorized to adopt rules to implement the regulatory provisions. The regulation is designed to protect purchasers of burial rights, and preneed funeral or burial merchandise or funeral or burial services. This chapter also establishes a methodology by which specified cemeteries must set aside a portion of the cost of their services in a trust to provide for perpetual care and maintenance of gravesites.

Section 497.003, F.S., provides eight specific exemptions from the provisions of the chapter for certain church, civic, local government, and family cemeteries. However, 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 and mediation procedures by the DBF in the event of a consumer complaint.

Throughout chapter 497, F.S., references are made to church cemeteries and in some cases to internment facilities associated with synagogues. The chapter does not provide a definition for the term church and there is not a consistent reference to synagogues or any mention of any other religious institution in relation to cemetery affiliation. Additionally, the references do not specifically address the relationship of the religious institution to the cemetery.

Section 497.201, F.S., requires all persons operating cemeteries to be licensed unless specifically exempted. The cemetery company must pay an initial investigation fee of \$5,000 and an annual license fee based on the cemetery's annual gross sales as established in s. 497.213, F.S., as follows:

Gross sales of at least	But less than	Fee Amount
\$0	\$25,000	\$250
\$25,000	\$100,000	\$350
\$100,000	\$250,000	\$600
\$250,000	\$500,000	\$900
\$500,000	\$750,000	\$1,350
\$750,000	\$1,000,000	\$1,750
\$1,000,000+		\$2,650

Section 497.405, F.S., further requires all persons that may sell a preneed contract for services, merchandise or burial rights, to apply to the board for a valid certificate of authority. This section includes those exempt under s. 497.003, F.S., but makes very specific exemptions for trust institutions receiving funds in trust for the sale of a preneed contract, certain qualified Florida corporations, and certain churches offering specific preneed services that are located in counties with less than 960,000 in population on July 1, 1996. The initial application and annual renewal fees for certificates of authority under this section are set by the board at an amount not to exceed \$500 per certificateholder. Branch registrants are allowed to pay a fee established by the board of not more than \$100. This section also requires each certificateholder to pay a one-time fee at an amount set

by the board, not to exceed \$5, for each preneed contract entered into no later than 60 days after the end of each quarter. Fees are paid to the DBF and deposited into the Regulatory Trust Fund.¹

Additionally, s. 497.103(4) (1998 Supp.), authorizes the DBF to examine the financial affairs of any cemetery company and any preneed sales certificateholder and charge examination fees prescribed by departmental rule as authorized in s. 497.431, F.S. The fees are limited to \$300 per 8-hour day for each examiner plus per diem expenses if out-of-state travel is required. The department is also entitled to recover reasonable and justifiable costs if the investigation results in judicial or administrative disciplinary action.

Section 497.131, F.S., provides for the handling of disciplinary actions related to complaints against cemetery and funeral service providers. The DBF is charged to investigate any written complaint filed with the DBF and the DBF and the board are authorized to take final action on a complaint. When a complaint is deemed to be legally sufficient,² the DBF is to submit its investigative report to the probable cause panel of the board. This section provides for the prosecution of such complaints by the DBF or the board in certain circumstances under the provisions of Chapter 120, F.S., The DBF is also to refer any investigation or disciplinary proceeding not before the Division of Administrative Hearings under Chapter 120, F.S., within 1 year of the filing of a complaint. In such cases, the panel is authorized to retain independent council and investigators to continue the investigation. The associated costs are to be paid from the Regulatory Trust Fund.

Section 497.117, F.S., directs the Department of Legal Affairs to provide legal and investigative services to the DBF's Board of Funeral and Cemetery Services. This section also authorizes the board to retain independent legal counsel to provide legal advice to the board on a specific matter if such action is approved by the Attorney General. The fees and costs of retaining such counsel is to be paid from the Regulatory Trust Fund.

Due to Florida's aging population and the influx of retirees to the state, the cemetery industry has become a fast-growing segment of the economy, with over \$200 million gross sales by cemetery licensees last year. The regulation of cemetery and funeral services under Chapter 497, F.S., has been continually amended to address the rise of new situations resulting from this rapid growth in the industry. The DBF and the Board of Funeral and Cemetery Services has proposed a comprehensive review of the provisions of the chapter during the 1999/00 interim to determine if statutory changes need to be made to streamline the regulatory process and promote competition in the industry while maintaining adequate protection for consumers.

B. EFFECT OF PROPOSED CHANGES:

This bill revises the reference to church affiliated cemeteries in Chapter 497, F.S., by creating a definition for "religious institution" to reflect the broader scope of facilities which can be found in the state, and then substitutes this term for the word "church" throughout the chapter. Additionally, the affiliation between the religious institution and the internment facility is established by the term ownership. However, the revised definition assigns the qualities of ownership to the religious physical facility as opposed to the religious organization.

Numerous provisions in Chapter 497, F.S., authorize the DBF's imposition and collection of a variety of regulatory fees from licensees. The statutes direct the DBF to deposit these fees into the Regulatory Trust Fund, which is referenced in a variety of ways within Chapter 497, F.S. The bill addresses this by revising the description of the Regulatory Trust Fund throughout the chapter to reflect the trust fund's placement under the Department of Banking and Finance.

¹Section 215.31, F.S., requires all agency revenues be deposited into the Treasury and accounted for by trust fund by the DBF. Section 215.321, F.S., establishes the Regulatory Trust Fund as the depository for funds received under a variety of regulatory statutes administered by the DBF, including Chapter 497, F.S. NOTE: this section does not place the trust fund within any particular subsection of the DBF.

²Section 497.131, F.S., specifies that a complaint is legally sufficient if the investigation reveals ultimate facts showing a violation of Chapter 497, F.S., or related DBF or board rules.

The bill consolidates examination, application, and renewal fees for cemetery and funeral service providers regulated under Chapter 497, F.S., to conform the Department of Banking and Finance's regulatory provisions for these licensees with the DBF's regulatory provisions for other financial services industries. In some instances, this consolidation has resulted in an increase in the application and renewal fees, but provides relief through elimination of the additional examination fees.

Specifically, the annual license fees for cemetery companies with annual gross sales of at least \$750,000 but less than \$1 M are raised from \$1,750 to \$2,250, those with gross sales of at least \$1 M but less than \$5 M are raised from \$2,650 to \$3,250, and a new category is created to provide that companies with more than \$5 M in gross sales will be assessed a fee of \$4,900.

The fee charged sellers of preneed cemetery or funeral services for the original certificate of authority and its annual renewal is currently set by the board and cannot exceed \$500. The bill reduces the initial application fee to \$250 and provides a graduated annual renewal fee based on the annual gross sales of the applicant as follows:

Gross sales of at least	But less than	Fee Amount
\$0	\$100,000	\$250
\$100,000	\$250,000	\$400
\$250,000	\$500,000	\$600
\$500,000	\$750,000	\$1,000
\$750,000	\$1,000,000	\$1,500
\$1,000,000	\$5,000,000	\$2,000
\$5,000,000+		\$4,900

This fee structure has been recommended by the DBF as an equitable approach to assessing regulatory fees in relation to the level of departmental regulatory activity required per applicant due to the level of business activity of the applicant. The department further asserts that this fee schedule was developed to closely tract the current level of examination fee assessments collected from the tiers of cemetery and funeral preneed service sellers reflected in the chart.

The bill also raises fees for branch registrants from \$100 to \$150, and the one-time fee assessed per preneed contract is raised from up to \$5 to up to \$10. The department asserts that although these fees are being raised, cemetery and funeral service providers should experience little if any actual increase in costs due to the elimination of the fees assessed for the mandatory triennial examination of cemetery company financial affairs and preneed certificateholders.

Finally, the bill requires the DBF to conduct a comprehensive review of Chapter 497, F.S., to examine a number of issues relating to the promotion of competition in the cemetery industry, streamlining the regulatory process provided by Chapter 497, F.S., and maintaining certain consumer protection provisions. The DBF must conduct two public workshops and report its findings and make recommendations for statutory revisions. A preliminary report is due by December 1, 1999, and is to be presented at a public hearing for comment. The final report is to be submitted to the Legislature, the Governor and the Office of Program Policy Analysis and Government Accountability by January 15, 2000. To facilitate immediate action on this requirement, the bill provides that this provision will take effect upon the bill becoming law. Otherwise the effective date for provisions in the bill is July 1, 1999.

The bill provides an appropriation of \$115,000 to the DBF from the department's Regulatory Trust Fund for FY 1999/00, to carry out the provisions of the act.

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 bill eliminates the department's authority to set certain fees by rule by establishing a set fee in statute.

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

No.

(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?

Yes. The bill increases the annual license fees for cemetery companies with more than \$750,000 in annual gross sales, and the annual certificate of authority renewal fees for certificateholders for sellers of preneed cemetery and funeral services with more than \$250,000 in annual gross sales.

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

No.

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

Yes. The bill reduces the initial application fee for certificates of authority to sell preneed cemetery and funeral services, and eliminates the DBF's authority to collect examination fees.

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

No.

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?

Yes. The bill creates a tiered system of fee assessments based on annual gross sales of preneed cemetery and funeral services for certificates of authority. Certificateholders with larger entities to regulate are assessed higher fees.

4. Individual Freedom:

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

No.

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

No.

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:

Sections 497.003, 497.005 (1998 Supp.), 497.117, 497.131, 497.213, 497.245, 497.341, 497.405, 497.407, 497.431, and 497.435, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 497.003, F.S., to revise the reference to church affiliated cemeteries and internment facilities by substituting the words "religious institution." This section establishes the relationship between the religious institution facility and the internment facility as being one of ownership.

Section 2 amends s. 497.005, F.S. (1998 Supp), to provide a definition for religious institution.

Section 3 amends s. 497.103, F.S. (1998 Supp.), to eliminate the department's authority to charge examination fees.

Section 4 amends s. 497.117, F.S., to revise the description of the Regulatory Trust Fund to reflect the trust fund's placement under the Department of Banking and Finance.

Section 5 amends s. 497.131, F.S., to revise the description of the Regulatory Trust Fund to reflect the trust fund's placement under the Department of Banking and Finance.

Section 6 amends s. 497.213, F.S., by raising the annual license fees cemetery companies with at least \$750,000 in annual gross sales.

Section 7 amends s. 497.245, F.S., to eliminate the department's authority to charge examination fees.

Section 8 amends s. 497.003, F.S. (1998 Supp.), to revise the reference to church affiliated cemeteries and internment facilities by substituting the words "religious institution." This section establishes the relationship between the religious institution facility and the internment facility as being one of ownership.

Section 9 amends s. 497.405, F.S., to revise the reference to church affiliated cemeteries and internment facilities by substituting the words "religious institution." This section establishes the relationship between the religious institution facility and the internment facility as being one of ownership.

Section 10 amends s. 497.407, F.S., by lowering the initial application fee for a certificate of authority, and by establishing a tiered assessment of annual renewal fees for certificateholders based on annual gross sales. This section also increases the certificate of authority fee assessed for operating as a branch registrant, and the one-time fee assessed for each preneed contract. Finally,

this section revises the description of the Regulatory Trust Fund to reflect the trust fund's placement under the Department of Banking and Finance.

Section 11 amends s. 497.431, F.S., to eliminate the department's authority to charge examination fees except for out-of-state per diem travel expenses.

Section 12 amends s. 497.435, F.S., to revise the description of the Regulatory Trust Fund to reflect the trust fund's placement under the Department of Banking and Finance.

Section 13 requires the DBF to conduct a comprehensive review of Chapter 497, F.S., to examine:

- ways to promote and increase competition in the cemetery industry and streamline the regulatory process;
- ways to eliminate the determination of need for new cemeteries required by the statutes, address potential constitutional concerns related to religious organizations;
- and determine the cost of providing perpetual care for cemeteries;
- the statutory requirement for care and maintenance trust funds for adequacy in providing perpetual care for cemeteries;
- the disciplinary powers of the department and the board to determine clarity of enforcement; and
- other sections of the statutes as necessary.

This section requires the department to hold at least two public hearings; prepare a draft report of the department's findings by December 1, 1999, for presentation at an additional public hearing; and submit a final report by January 15, 2000, to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Governor, and the Office of Program Policy Analysis and Government Accountability. Finally, this section makes a provision for its effectiveness upon the act becoming law.

Section 14 provides an appropriation of \$115,000 to the Department of Banking and Finance from the department's regulatory trust fund.

Section 15 provides an effective date for all but one provision of the bill of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Expenses</u>	<u>199/00</u>
Regulatory Trust Fund	(\$115,000)

This amount reflects estimated costs related to the Task Force established to review Chapter 497, F.S., The department anticipates holding 5 public hearings and 8 committee meetings, and contracting for an actuarial study on the effects of eliminating the department's need determination for new and existing cemeteries.

2. Recurring Effects:

3. Long Run Effects Other Than Normal Growth:

4. Total Revenues and Expenditures:

Regulatory Trust Fund	(\$115,000)
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Those providers of cemetery and funeral services that are currently assessed regulatory fees by the DBF may experience higher annual license and renewal and certificate of authority fees, but these will be offset by the elimination of examination fees.

2. Direct Private Sector Benefits:

In addition to realizing an overall reduction in regulatory costs, cemetery and funeral service providers will be able to factor the set fees provided in this bill into their annual budgets instead of having to attempt to estimate the exam fees arbitrarily incurred within the 3-year examination cycle.

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

The reduction in industry costs should enable the industry to remain competitive.

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 to take an action requiring the expenditure of funds.

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.

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V. COMMENTS:

The definition provided for "religious institution" should be revised to reflect the organization instead of the facility.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Susan F. Cutchins