

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1698

SPONSOR: Banking and Insurance Committee and Senator Klein

SUBJECT: Cemeteries

DATE: March 22, 1999

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|--------------------|-----------|---------------------|
| 1. | <u>Woodham</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | <u>FR</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

The committee substitute for SB 1698 revises provisions relating to the regulation of cemeteries and the regulation of the preneed sale of funeral and burial merchandise, by the Department of Banking and Finance. It defines the term "religious institution" and revises provisions to substitute that term for the term "church" and "synagogue" to provide consistent word usage. The bill eliminates examination fees for both cemeteries and preneed sales licensees. The bill increases application fees for certificates of authority for preneed sales from \$250 to \$500. The bill changes the annual renewal fees for certificates of authority for selling preneed contracts, which is currently \$500, basing the fee on the number to preneed contracts sold, resulting in increased fees for certificateholders who sell more than 250 contracts per year. The department and the Board of Cemetery and Funeral Services would be required to conduct a study of chapter 497, F.S., and to submit a report no later than August 15, 2000.

The bill provides an appropriation of \$115,000 from the department's Regulatory Trust Fund, which is the estimated cost of the study and the negative fiscal impact of the bill. All of the fee changes are estimated to have a net \$0 dollar impact, due to elimination of examination fees offsetting increases in licensure fees.

This bill amends the following sections of the Florida Statutes: 497.003, 497.005, 497.103, 497.117, 497.131, 497.213, 497.245, 497.341, 497.405, 497.407, 497.431, 497.435 and 497.439.

II. Present Situation:

Chapter 497, Florida Statutes, provides for the regulation of funeral and cemetery services by the Department of Banking and Finance (department) and the Board of Funeral and Cemetery Services (board) created within the department for that purpose. Both the department 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 grave sites. The chapter contains statutes that regulate *cemeteries* and certain general powers of the department, in ss. 497.001-497.361, F.S. The chapter also regulates the sale of *preneed contracts* of funeral and burial merchandise, for which a separate certificate of authority is required for any funeral home or cemetery that sells such contracts, in s. 497.401-497.531, F.S. (Funeral directors and direct disposers [cremation] are separately licensed and regulated under chapter 470, F.S.)

Section 497.003, F.S., provides eight specific exemptions from the provisions of the chapter relating to cemeteries 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 department 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 no consistent reference to synagogues or any mention of other religious institutions 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 application 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 |

Preneed Sales of Funeral and Burial Merchandise -- 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. Section 497.407, F.S., sets forth the requirements of annual renewals for certificates of authority.

The fee for the issuance of the original certificate of authority and each annual renewal is set by the board, but is not to exceed \$500, and shall be accompanied by an annual statement. Branch registrants are 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 Regulatory Trust Fund of the Division of Finance and are to be used to defray the cost of the board and the department in administering ch. 497.

Additionally, s. 497.103(4) (1998 Supp.), authorizes the department 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.

Currently, under s. 497.407, F.S., the original certificate of authority and the renewal fees are set by the board at an amount not to exceed \$500. These fees are currently set at \$250. A business enterprise operating under a certificate of authority may operate under a name different from the common business enterprise by submitting an application to become a branch registrant. Branch registrants may operate under the certificate of authority of the common business enterprise by submitting an annual fee not to exceed (and currently set at) \$100 to the department's Regulatory Trust Fund.

Section 497.439, F.S., requires preneed sales agents to submit an application for registration, along with a \$100 fee, via certified mail, return receipt requested, to the department.

The regulation of cemetery and funeral services under ch. 497, F.S., has been continually amended to address the rise of new situations resulting from the rapid growth in the industry. The department and the board have proposed a comprehensive review of the provisions of the chapter in 1999 to determine if statutory changes need to be made to streamline the regulatory process and promote competition within the industry, while maintaining adequate protection for consumers.

III. Effect of Proposed Changes:

Section 1. Amends s. 497.003, F.S. Replaces the terms “church” and “synagogue” with “religious institution,” to create uniformity of language in the chapter, with regard to current exemptions for most regulatory requirements. See the definition in Section 2, below.

Section 2. Amends s. 497.005, F.S. Defines the term “religious institution” to include an organization formed solely for religious purposes which has qualified for exemption from federal income tax as an exempt organization under the provisions s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Section 3. Amends s. 497.103, F.S. The bill allows the department or the board to adopt rules allowing for the electronic submission of any applications, documents, or fees required by the chapter, and to adopt rules authorizing the board or department to accept a certification of

compliance with this chapter, rather than submission of the actual documents. The bill also removes the examination fee charged to the cemetery company or preneed sales certificateholder for the department's examination of the company's financial affairs.

Section 4. Amends s. 497.117, F.S. The bill clarifies that the funding for the fees and costs of legal counsel shall be paid from the Regulatory Trust Fund of the Department of Banking and Finance, rather than simply referring to the “Regulatory Trust Fund.”

Section 5. Amends s. 497.131, F.S., to clarify that costs of legal counsel and investigators shall be paid from the department's Regulatory Trust Fund, rather than referring to the Regulatory Trust Fund.

Section 6. Amends s. 497.213, F.S. Annual license renewal fees for cemetery companies which have gross sales of less than \$750,000 would remain the same as current law (ranging from \$250 to \$1,350). The bill increases annual license fees for cemetery companies which have gross sales of at least \$750,000 as follows:

| Gross sales of at least: | But less than: | Current Annual License Fee | Proposed Annual License Fee |
|--------------------------|----------------|----------------------------|-----------------------------|
| \$750,000 | \$1,000,000 | \$1,750 | \$2,250 |
| \$1,000,000 | \$5,000,000 | \$2,650 | \$3,250 |
| \$5,000,000 + | | \$2,650 | \$4,900 |

Section 7. Amends s. 497.245, F.S. The bill makes a conforming change to delete the provision that allows a cemetery to use trust income from its care and maintenance trust fund to be used to pay for annual examination fees, as examination fees are no longer separately assessed by the department under the bill.

Section 8. Amends s. 497.341, F.S. Replaces the term “church” with “religious institution” for more consistent word usage in the section that allows church cemeteries to limit burials to church members and their families (which is an exception to certain non-discrimination requirements).

Section 9. Amends s. 497.405, F.S. Replaces the term “church” with “religious institution” for more consistent word usage in the section that exempts church-owned cemeteries that meet certain conditions from the requirement of having a certificate of authority to sell preneed contracts.

Section 10. Amends s. 497.407, F.S. The bill sets forth the application fee for an initial certificate of authority for selling preneed contracts at \$500, which currently may not exceed \$500 but is set at \$250. The bill revises the current renewal fee for certificates of authority, which currently may not exceed (and is set at) \$500. The annual license renewal fees under the bill would be based on the number of preneed contracts sold, as are set forth in the table below:

| Number of preneed contract sales during the preceding year is at least: | But fewer than: | Proposed Annual License Renewal Fee (currently, \$500) |
|---|-----------------|--|
| 0 | | \$300 |
| 1 | 50 | \$400 |
| 50 | 250 | \$500 |
| 250 | 1,000 | \$850 |
| 1000 | 500 | \$1,500 |
| 2500 | 5,000 | \$2,500 |
| 5,000 | 15,000 | \$6000 |
| 15,000 | 30,000 | \$12,500 |
| 30,000+ | | \$18,500 |

Branch registrants may still operate under the certificate of authority of the common business enterprise, but the fee is increased from \$100 to \$150, and must be made payable to the department's Regulatory Trust Fund. The board is to deposit any funds received from fines or penalties into the department's Regulatory Trust Fund. The bill also requires that each certificateholder pay the Regulatory Trust Fund an amount set by the board, not to exceed \$10, currently not to exceed \$5, for each preneed contract entered into.

Section 11. Amends s. 497.431, F.S. Examinations and investigations of businesses selling preneed contracts are no longer conducted at the expense of the person or organization examined, except that the person or organization examined is responsible for travel and per diem expenses for out-of-state travel incurred by department representatives or examiners in connection with an examination.

Section 12. Amends s. 497.435, F.S. Clarifies that the Regulatory Trust Fund is for the department and not under the Division of Finance.

Section 13. Amends s. 497.439, F.S. Preneed sales agent application and application fee no longer need to be sent by certified mail, return receipt requested. These items may now be transmitted electronically.

Section 14. The bill directs the department and the board to perform a comprehensive review of chapter 497, F.S., and report findings and make recommendations, including proposed legislation. The department must conduct a minimum of two workshops on these issues prior to April 1, 2000, to receive public comments.

The department shall submit a preliminary report by April 1, 2000, and a final report by August 15, 2000, detailing its findings and recommendations. The department must have a public workshop between the date the preliminary report is issued and August 15, 2000, to solicit public testimony on the preliminary draft. The final report shall be submitted 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.

The department is authorized to contract with such consultants as are necessary to ascertain the costs of perpetual care and maintenance for new and existing cemeteries, assess the impact on such costs of eliminating the need requirement contained in chapter 497, F.S., and recommend ways to minimize any negative impact on such costs caused by eliminating the need requirement. This section is to take effect upon becoming law.

Section 15. The bill appropriates \$115,000 for fiscal year 1999-2000 to the Department of Banking and Finance from the department's Regulatory Trust Fund for enforcing provisions of this act.

Section 16. This act shall take effect July 1, 1999, except as otherwise provided in the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

CS/SB 1698 increases the annual license fees for cemetery companies with more than \$750,000 in annual gross sales. Annual renewal fees for certificates of authority for selling preneed contracts would now be assessed based on the number of preneed contracts sold during the previous year, with increased fees for licenses that have more than 250 sales per year. See the tables in Sections 6 and 10, above, for the specific fee changes. The bill eliminates the department's authority to collect examination fees, which is estimated to offset the fee increases and result in a \$0 impact.

B. Private Sector Impact:

CS/SB 1698 increases the annual license fees for those cemetery companies with gross sales of over \$750,000. It also creates a tiered system of fee assessments for renewals of certificates of authority. The initial application fee for a certificate of authority remains at \$500. However, certificateholders are assessed annual renewal fees based on the number of preneed contracts sold during the previous year. The bill also eliminates examination fees charged by the department.

The bill allows providers of cemetery and funeral services to electronically file their applications and fees. This results in the elimination of paperwork, both for the department and the provider. Those providers of cemetery and funeral services that are currently assessed regulatory fees by the department may experience higher annual license, renewal and certificate of authority fees, but these will be offset by the elimination of examination fees.

Cemetery and funeral service providers will be able to factor the set fees provided in this bill into their annual budgets, instead of attempting to estimate the examination fees incurred within a 3-year examination period.

C. Government Sector Impact:

The bill restricts the department's ability to set fees by rule, as the fees will now be codified in the statute.

Fiscal Impact:

Non-recurring Effects

| | |
|---------------------------|-------------|
| DBF Regulatory Trust Fund | (\$115,000) |
|---------------------------|-------------|

Recurring Effects

None

| | |
|---|--------------------|
| <u>Total Revenues and Expenditures</u> | (\$115,000) |
|---|--------------------|

This amount reflects estimated costs related to the task force established to review Chapter 497, F.S. The department anticipates holding five public hearings and eight committee meetings, and contracting for an actuarial study to ascertain the costs of perpetual care and maintenance for new and existing cemeteries, assess the impact on such costs of eliminating the need requirement contained in Chapter 497, and recommend ways to minimize negative impact on the costs caused by eliminating the need requirement.

The committee substitute gives the department additional time in which to review Chapter 497. It also includes the Funeral and Cemetery Board to participate in the review. The board and the department must have a preliminary report completed by April 1, 2000, and a final report is due by August 15, 2000. This gives the department eight months longer than the original bill in which to review Chapter 497, obtain an actuarial study and hold public workshops to obtain public comment on Chapter 497.

The department estimates a \$0 impact for all of the fee changes in the bill, as demonstrated in the two tables below that address the annual license renewal fees for preneed certificates of

authority and the following paragraph that addresses the annual license renewal fees for cemeteries:

Current Law Revenue for Preneed Certificates of Authority

| | Number of COAs | License Fee | Revenue |
|--|---------------------------|------------------------|------------------|
| Certificates of Authority | 341 | \$250 | \$85,250 |
| Certificate of Authority Branch Registrants | 387 | \$100 | \$38,700 |
| Examination Fees | variable | variable | \$153,500 |
| Total Revenue | | | \$277,450 |

CS/SB 1698 Revenue for Preneed Certificates of Authority

| | | | License Fee | Revenue |
|--|---------------|----------|------------------------|------------------|
| Certificates of Authority Based on Number of Contracts Sold | None | 42 | \$300 | \$12,600 |
| | 1-49 | 170 | \$400 | \$68,000 |
| | 50-249 | 103 | \$500 | \$51,500 |
| | 250-999 | 38 | \$850 | \$32,300 |
| | 1,000-2,499 | 7 | \$1,500 | \$10,500 |
| | 2,500-4,999 | 3 | \$2,500 | \$7,500 |
| | 5,000-14,999 | 1 | \$6,000 | \$6,000 |
| | 15,000-29,999 | 1 | \$12,500 | \$12,500 |
| >30,000 | 1 | \$18,500 | \$18,500 | |
| Certificate of Authority Branch Registrants | | 387 | \$150 | \$58,050 |
| Total Revenue | | | | \$277,450 |

Cemetery Fees -- The bill also changes the annual license fees for cemeteries, which affect only those cemeteries that have greater than \$750,000 in gross fees. The department estimates that the increase in fees (and revenue) for such cemeteries is \$58,550 which is offset by the elimination of the examination fees, estimated to be (\$58,544), resulting in a net change in revenue of \$6 (nearly \$0).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
