

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 323 Funeral and Cemetery Services
SPONSOR(S): Brown & others
TIED BILLS: **IDEN./SIM. BILLS:** SB 528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance		Callaway	Cooper
2) Finance & Tax			
3)			
4)			
5)			

SUMMARY ANALYSIS

During the past few years, numerous media reports have publicized alleged problems in the funeral and cemetery industry, raising concerns about the effectiveness of funeral and cemetery regulation and its ability to protect Florida's consumers. Some of the reported problems involve cemeteries accused of burying decedents in the wrong burial plots, improper disposal of human remains, and the sale of inadequate burial space.

Currently, the death care industry is regulated by two boards. The Board of Funeral Directors and Embalmers is located in the Department of Business and Professional Regulation (DBPR). This board regulates and licenses funeral directors, embalmers, direct disposal facilities, direct disposers, and cinerator facilities. The Board of Funeral and Cemetery Services is located in the Department of Financial Services (DFS). This board regulates and licenses cemeteries, cemetery companies, monument establishments, and preneed contract sellers. The regulation primarily consists of oversight of the financial side of the death care industry. The two boards do not have overlapping duties or functions.

The bill abolishes the Board of Funeral Directors and Embalmers currently within DBPR and the Board of Funeral and Cemetery Services currently within DFS and creates the Board of Funeral, Cemetery and Consumer Services within DFS (effective July 1, 2004). The new board will assume regulation and licensing of all individuals and facilities involved in the death care industry. The bill transfers the duties and responsibilities relating to the death care industry from DBPR to DFS by a type-two transfer. Accordingly, the bill is expected to have minimal fiscal impact on the state. Although the bill provides some additional requirements and responsibilities for individuals and entities in the death care industry, the bill is expected to have nominal fiscal impact on the private sector.

The bill also creates a regulatory scheme for monument establishments, an area of the death care industry left largely unregulated under current law. The bill authorizes monument establishments to sell preneed contracts upon certification.

The bill addresses several areas relating to consumer concerns in the regulation of funeral and cemetery activities. Specifically, the bill:

- Sets statutory standards for grave spaces and sizes;
- Requires the creation of certified land surveys to map the location and identification of grave spaces;
- Provides for the identification of human remains on the inside and outside of burial containers;
- Clarifies contract cancellation and refund provisions.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: January 27, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

Reduce government: This bill increases the level of government regulation over licensed funeral establishments, licensed cemetery establishments, licensed funeral directors, embalmers, direct disposers, and monument establishments.

Lower taxes: The bill requires an additional licensing fee for monument establishments wanting to sell preneed contracts.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

During the past few years, numerous media reports have publicized alleged problems in the funeral and cemetery industry, raising concerns about the effectiveness of funeral and cemetery regulation and its ability to protect Florida's consumers. Some of the reported problems involve cemeteries accused of burying decedents in the wrong burial plots, improper disposal of human remains, and the sale of inadequate burial space.

Chapter 470, F.S., governs funeral directors, embalming and the practice of cremating human remains. The Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation (DBPR) administers and enforces the provisions of chapter 470, F.S. This Board is the regulatory body that oversees the health, safety, and welfare regulations of those involved in the disposal of human remains. The regulatory scheme for these activities requires oversight of the professional's personal knowledge of proper disposal practices and the latest health and safety developments related to those practices. Continuing education and testing requirements assist the board in verifying the knowledge level of the licensees. The Board of Funeral Directors and Embalmers contains 7 members appointed by the Governor and confirmed by the Florida Senate.

Chapter 497, F.S. governs cemeteries, cemetery companies, and preneed contracts for funeral merchandise or services. The Board of Funeral and Cemetery Services within the Department of Financial Services (DFS) administers and enforces the provisions of chapter 497, F.S. This Board is the regulatory body that oversees the financial interest activities of cemetery owners and operators, funeral directors, and any other person in the death care industry that contracts for the sale of preneed services and merchandise. The regulatory scheme for these activities requires oversight of the participating company's financial stability and contractual behavior with its clients. The Board of Funeral and Cemetery Services contains 7 members appointed by the Governor from nominations from the CFO and confirmed by the Florida Senate.

PROPOSED CHANGES

Board of Funeral, Cemetery and Consumer Services (new board)

The bill abolishes the Board of Funeral Directors and Embalmers currently within DBPR and the Board of Funeral and Cemetery Services currently within DFS and creates the Board of Funeral, Cemetery and Consumer Services (new board) within DFS (effective July 1, 2004).

The new board will contain 10 members, 9 of which are appointed by the Governor from nominations from the CFO and confirmed by the Florida Senate. The tenth member is the State Health Officer or his/her designee. This member is not appointed by the Governor or confirmed by the Florida Senate. Currently, the board within DBPR and the board within DFS has 7 members each (14 members total). Accordingly, the bill reduces the board membership by four members. The members of the two current boards are not reappointed on the new board to serve out their terms. Rather, a whole new board is to be appointed under the bill.

The new board's composition is as follows:

- Two members must be licensed funeral directors, who are associated with a funeral establishment.
- One member must be a licensed funeral director, who is associated with a licensed funeral establishment, and owns or operates an approved cinerator facility.
- Two members must be persons whose primary occupation is associated with a licensed cemetery company.
- One member must be a monument dealer licensed under chapter 497, F.S.
- One member must be the State Health Officer or his/her designee.
- Three members must be consumers who are residents of Florida, who have never been licensed as funeral directors or embalmers, and who are not connected with a cemetery or cemetery company, the death care industry, the practice of embalming, funeral directing or direct disposition.¹

Members of the new board, except for the State Health Officer or his/her designee, serve four year terms. This is consistent with membership terms of the two boards currently in existence. The State Health Officer member serves on the new board as long as he/she holds office.

After each of the new board member's initial four year appointment expires, terms will be staggered, with some of the new board members being reappointed for two years.

The Governor currently has authority to suspend members of the two current boards for malfeasance, neglect of duty, incompetence, permanent inability to perform official duties or commission of a felony.² This bill deletes the commission of a felony reason for suspension and replaces it with commission of a crime. It also adds a reason for suspension of "other substantial cause as determined by the Governor to evidence a lack of fitness to sit on the board."

The bill sets forth circumstances that will result in a board member being deemed to have resigned his board membership. The circumstances are similar to those contained in current law for board members of the two boards currently in existence.³

¹ One of the consumer members must be at least 60 years of age or older. One consumer member must be licensed as a certified public accountant. Neither of the two boards currently in existence require a licensed CPA as a consumer member.

² s. 455.209(1), F.S. (2003); s. 497.113(1), F.S. (2003)

³ s. 455.207(3), F.S. (2003); s. 497.109(3), F.S. (2003)

The bill adds the requirement that actions of the new board members, former board members or persons of the new board's probable cause panel are exempt from civil liability when the members of the board or the probable cause panel are acting in good faith in his/her official capacity. Although current law exempts the same groups of people from civil liability, current law does not require the members' actions to be in good faith in order for the exemption to attach.⁴

Currently, the Department of Legal Affairs defends members of the board within DFS against civil suit and the Department of Legal Affairs **or** outside counsel defends members of the board within DBPR against civil suit.⁵ The bill changes the legal entities defending the new board members against civil suit to the Department of Legal Affairs **and** the Division of Risk Management.

The bill provides the new board's headquarters is at DFS in Tallahassee, the same city as the headquarters for the two boards currently in existence.

The bill requires the chair and vice-chair for the new board to be appointed by the CFO, rather than be elected by the board members. The chair and vice-chair for the two boards currently in existence are selected by the board members.⁶

The bill requires the new board meet a minimum of every 6 months.

Currently, the chair of the both boards or a quorum of either board can meetings other than the annual meeting.⁷ The bill allows only the CFO to call special meetings of the new board.

Both current law and this bill provide for compensation to board members of \$50 for each day's attendance at official meetings and for compensation for out-of-state travel.

The bill requires the new board to enforce and administer the provisions of chapters 470 and 497, F.S. and gives the new board the authority to enforce the provisions of chapter 455, F.S. as it relates to chapter 470, F.S. (effective July 1, 2004). The bill requires DFS to present any proposed rule(s) affecting chapters 455, 470, or 497, F.S. to the new board first for review and recommendations. Emergency rules, however, do not have to be presented to the new board first for review and recommendations.

Division of Funeral, Cemetery and Consumer Services

The bill creates the Division of Funeral, Cemetery and Consumer Services (the new division) within DFS (effective July 1, 2004). The new division is responsible for recordkeeping, examination services, legal services, investigative services, and other necessary services under chapters 470 and 497. The new division is given authority to use funds received from settlements for training auditors and for conducting examinations for licensees; however, no depository trust fund is designated for the funds collected.

The new division will be headed by a director who is appointed by the CFO and serves at the CFO's pleasure. The bill sets forth the responsibilities of the director of the new division. The director of the new division will also serve as executive director of the new board.

The duties of the Secretary of DBPR under chapter 470, F.S. are transferred to the CFO and authority is given to delegate the duties to the director of the new division.

⁴ s. 455.209(2), F.S. (2003); s. 497.113(2), F.S. (2003)

⁵ s. 455.209(2), F.S. (2003); s.497.113(2), F.S. (2003)

⁶ s. 455.207(2), F.S. (2003); s. 497.109(2), F.S. (2003)

⁷ s. 455.207(3), F.S. (2003); s. 497.109(3), F.S. (2003)

A type-two transfer is authorized to transfer all duties, powers, personnel, property, records, funds, and functions of the two existing boards to the new board. The bill provides for the substitution of the new division in any judicial or administrative proceeding involving the two existing boards. The bill maintains the validity of licenses and registrations issued under chapter 470, F.S. and chapter 497, F.S. on the date of the abolishment of the two existing boards and the creation of the new board. The rules in effect on the date of abolishment of the board within DBPR are transferred to DFS. The rules of the board currently within DFS become the rules of the new board.

All fees and penalties collected pursuant to chapter 470, F.S. is to be deposited in the Regulatory Trust Fund of DFS. Currently, moneys collected for fees and penalties pursuant to chapter 470 are deposited in the Professional Regulation Trust Fund in DBPR.

Definitions in Chapter 470

The bill alphabetizes definitions and makes conforming changes to existing definitions in s. 470.002, F.S. It also adds the following definitions to that section:

- body parts,
- closed container,
- cremated remains,
- cremation chamber,
- cremation container,
- cremation interment container,
- niche,
- processing,
- pulverization,
- temporary container and
- urn.

The bill amends the following definitions in s. 470.002, F.S.:

- Casket - to include containers which may or may not be combustible
- Cremation – to include direct flame and heat or chemical means and to include processing and pulverization of bone fragments
- Funeral merchandise or merchandise – to include creation interment containers
- Legally authorized person – to exclude the surviving spouse of the decedent if the spouse committed an act of domestic violence resulting in or contributing to the decedent's death and to allow a legally authorized person to agree to cremate the deceased as long as no other legally authorized persons having the same priority or higher priority than the legally authorized person making the decision to cremate objects to the decision to cremate.

Embalmer Provisions

Embalming is currently regulated by DBPR.

Section 470.085, F.S. provides for an embalmer apprentice program. Embalmer apprentices perform tasks, functions, and duties relating to embalming under the direct supervision of a licensed embalmer.⁸

The bill extends the embalmer apprenticeship from 1 year to 3 years if the embalmer is not enrolled in and attending a course in mortuary science or funeral science while in the apprenticeship or from 3 years to 5 years if the embalmer is enrolled in or attending these course while in the apprenticeship.

⁸ s. 470.0085, F.S.

Direct Disposal Provisions

Section 470.002(10), F.S. defines the practice of direct disposition as “the cremation of human remains without preparation of the human remains by embalming and without any attendant services or rites such as funeral or graveside services or the making of arrangements for such final disposition.” A direct disposer must be registered with DBPR if he/she is not a licensed funeral director.⁹ DBPR currently regulates direct disposers and direct disposal establishments.

The bill specifies a minimum square feet requirement (625 interior contiguous) for direct disposal establishments. Currently, a 625 minimum square foot requirement is contained in an administrative rule.¹⁰

The bill also requires direct disposal establishments to have suitable capacity for refrigeration and storage of dead human bodies or to make arrangements for such. Current law allows the board within DBPR to set standards on refrigeration and storage by rule.¹¹ A current administrative rule contains similar requirements for refrigeration and storage as the proposed legislation.¹²

The bill increases the number of continuing education hours from three to six for direct disposer registration renewals.

Cinerator Facility Provisions

Cinerator facilities are facilities where dead human bodies are reduced to a residue. Although this process is generally known as cremation, it can also include calcination.¹³ Cinerator facilities are currently regulated by DBPR.

Most of the provisions in the bill relating to cinerator facilities codify existing administrative rules. Current law gives the DBPR authority to promulgate rules for the operation of cinerator facilities.¹⁴ In response to the authorization, the DBPR has promulgated administrative rules contained in 61G8-22, F.A.C.

The bill requires inspection of each cinerator facility prior to an initial issuance of a cinerator facility license or renewal of the license. The bill, however, does not specify who is to perform the inspection. Although, Florida Statutes requires inspection only when the cinerator facility license is initially issued, an administrative rule requires inspection at issuance and at biennial renewal of a license.¹⁵ Thus, the bill is a codification of an administrative rule.

The bill also requires each cinerator facility to maintain one or more retorts (chamber) for the reduction of dead human bodies. Currently, cinerator facilities are required to maintain one or more retorts by an administrative rule.¹⁶ Thus, the bill is a codification of an administrative rule.

Additionally, in order to initially receive a license or to renew a license, the bill requires a cinerator facility to maintain refrigeration which satisfies the standards set by the Department of Health and which contains a sufficient number of shelves for the average daily number of bodies stored, if unembalmed bodies are kept at the facility site. This is a codification of an administrative rule.¹⁷

⁹ s. 470.017(1), F.S.

¹⁰ Rule 61G8-23.004(2)(e), F.A.C.

¹¹ s. 470.021(1), F.S. (2003)

¹² Rule 61G8- 23.004(2), F.A.C.

¹³ Cremation is a process involving direct flame. Calcination is a process involving intense heat.

¹⁴ s. 470.025(2), (3), (5), (7)(a), F.S. (2003)

¹⁵ Rule 61G8-22.002. F.A.C.; s. 470.025(2), F.S. (2003)

¹⁶ Rule 61G8-22.002(1), F.A.C.

¹⁷ Rule 61G8-22.002(2), F.A.C.

The bill requires a cinerator facility to maintain sufficient pollution control equipment to comply with the requirements of the Department of Environmental Protection (DEP) in order to secure annual approved certification. This is a codification of an administrative rule already in existence.¹⁸

The bill requires a facility to have on site or immediately available sufficient sealed containers of a type required for transportation of bodies as specified in Rule 10D-37.012, F.A.C. This is a codification of an administrative rule already in existence; however, rule 10D-37.012, F.A.C. has been repealed.¹⁹ Thus, the bill references a nonexistent administrative rule.

Cinerator facilities are required by the bill to maintain clean and sanitary premises. This is a codification of an administrative rule.²⁰

A cinerator facility is required to have appropriate DEP permits. This is a codification of an administrative rule.²¹

A cinerator facility must retain all signed contracts for a minimum of 2 years under the bill. This is a codification of an administrative rule.²²

Currently, the statute allows a facility to cremate more than one dead human body if permission is received from a legally authorized person (as defined by s. 470.002(18), F.S.) for each body.²³ In addition, the bill allows a cinerator facility to rely on the permission of a legally authorized person to cremate more than one human body.

The bill provides cremation “may include the processing and pulverization of human bones.” The processing and pulverization of human bones is not included in the current definition of “cremation,” but is contained in the amended definition provided in the bill. Thus, the addition “of processing and pulverization of human bones” is added to section 470.025, F.S. to conform the section with the amended definition of “cremation” in the bill.

The bill allows cinerator facilities to place cremated remains in a temporary container following cremation. No such provision is contained in current law as “temporary container” is not defined. The bill defines “temporary container;” thus, the allowance of cremated remains to be put in a temporary container is added to section 470.025(13), F.S. to conform the section to the addition of the definition of “temporary container” in the bill.

The bill requires operators of cinerator facilities to establish written procedures for the removal of remains and bone fragments resulting from cremation and the postcremation procedures. Upon request, the written procedures are required to be available to DFS and legally authorized persons. Cinerator operators following the written procedures are immune from liability for the unintentional or incidental commingling of human remains or bone fragments left after cremation or the postcremation procedure. The current law contains no immunity for cinerator facility operators for commingling remains and does not require written procedures for the removal of remains.

The bill allows cremation of parts of human remains if a legally authorized person requests the cremation of human parts. The allowance for cremation of parts of human remains is an addition to current law which allows only cremation of human remains, not parts of human remains. Cremation of body parts (as defined in s. 470.02, F.S.) is not allowed under current law or the bill.

¹⁸ Rule 61G8-22.002(3), F.A.C.

¹⁹ Rule 61G8-22.002(4), F.A.C.

²⁰ Rule 61G8-22.002(5), F.A.C.

²¹ Rule 61G8-22.002(6), F.A.C.

²² Rule 61G8-22.002(7), F.A.C.

²³ s. 470.025(6), F.S. (2003); Rule 61G8-22.004(2), F.A.C.

Funeral Establishment Provisions

Funeral establishments are currently regulated by DBPR.

The bill requires a funeral establishment to maintain or make arrangements for the refrigeration and storage of dead human bodies **and** a preparation room for embalming dead human bodies. Alternatively, the bill requires a funeral establishment to make arrangement for a preparation room as established by board rule. Current law requires a funeral establishment to maintain or make arrangements for the refrigeration and storage of dead human bodies **or** maintain and make arrangements for a preparation room for embalming dead human bodies.

Reporting Requirements

The bill extends the deadline for funeral establishments, direct disposal establishments, cinerator facilities, and embalming facilities to submit a required report on the disposition of dead human bodies handled by the establishment/facility for the previous month from the 10th day of the month to the 20th day of the month.

Prohibitions/Penalties

Excluding preneed contracts, the bill prohibits the guarantee of the price of goods and services at a future date by any person.

Identification of Human Remains

The bill requires a funeral director, embalmer or direct disposer in charge of a final disposition to put an identification tag in the casket or other container containing a decedent or his/her remains. Currently, identification tags are only required on a decedent's wrist or ankle **or** in the casket or other container; thus this is an additional requirement. The bill requires the identification tag include the date of decedent's death and deletes the requirement the tag contain the decedent's social security number. Current law requires the identification tag to contain the decedent's name, date of birth and social security number.

Effective October 1, 2004, for decedents or human remains interred in unlicensed cemeteries, the bill requires the **funeral director** to insure the decedent or decedent's remains are properly identified by the placement of a permanent identification mark or tag indicating the decedent's name and date of death on the outer burial container, cremation interment container, other container, on the inside of a crypt or on the inside of a niche. For decedents or human remains interred in licensed cemeteries, the bill requires the **licensed cemetery** to place the identification tag or mark on the outside of the burial or cremation container. This identification is in addition to the identification required to be placed in the casket or other container containing a decedent or his/her remains. Current law does not require any identification tag on the outside of a burial container; it only requires identification on the inside of the container. Additionally, the bill gives authority to the new board to further specify requirements of the identification tag or mark.

The bill further allows a licensed cemetery to rely entirely on the decedent's identity stated in the burial transit permit or supplied by an embalmer or funeral director and makes a licensed cemetery immune from liability for any difference between the identity shown on the burial transit permit or on the decedent's identity supplied by an embalmer or funeral director and the actual identity of the decedent buried.

The bill requires direct disposal establishments to establish a system of identification of human remains received. The purpose of the identification system is to track the identity of the remains from the time of receipt until delivery of the remains to an authorized person. On request, a copy of the identification

system is to be available to DFS and to legally authorized persons. No identification system is required by current law.

Definitions in Chapter 497

The following definitions are added to chapter 497, F.S. by the bill:

- director,
- division,
- niche, and
- urn.

The following definitions in chapter 497, F.S. are amended by the bill:

- Board – to change the definition from the Board of Funeral and Cemetery Services to Board of Funeral, Cemetery, and Consumer Services. This definition change is a conforming change to conform the statute to the creation of the new board in the bill.
- Casket - to include containers which may or may not be combustible
- Ossuary – to include remains will be commingled with other remains and are nonrecoverable with this type of receptacle
- Scattering Garden – to provide cremated remains put in a scattering garden are remains not contained in a container and can be mixed with or placed on top of the soil or ground cover or buried in a receptacle containing commingled remains.

Cemetery Company Provisions

The bill requires a cemetery company's bylaws to include minimum standards for access for the installation of burial merchandise and requires the company to comply with its bylaws on this issue. Currently, a cemetery company's bylaws are only required to address minimum standards for burial merchandise or the installation of burial merchandise.²⁴ Additionally, there is no requirement for cemetery companies to comply with their bylaws in current law.

Standards for Grave Space

The bill sets forth the minimum measurements in length, width and depth of adult grave space established after October 1, 2004. Current law contains no requirements for grave space, but rule 69K-6.008, F.A.C. requires the interment to be at least twelve inches deep. This is consistent with the bill's depth requirements for grave space.

The bill also requires licensed cemeteries to obtain a survey of undeveloped land and to obtain a map of the survey reference markers by October 1, 2004 and prior to the sale of grave spaces in undeveloped cemetery land. The bill sets forth specific components for the map. It requires the cemetery company to maintain the map and make the survey and map available to DFS and to the public. The only requirement relating to cemetery maps in current law is contained in rule 69K-6.005(14), F.A.C. This rule requires cemeteries to allow DFS to inspect detailed maps of the cemetery.

Monument Provisions

The bill contains many changes to the law regarding monuments and monument establishments. Monuments are products used to identify a grave site. Cemetery memorials of all types are also considered monuments. Although monuments can be items other than headstones, generally, monuments are known as headstones to laypersons. Monuments are sold to the public by monument establishments. Under current law, monument establishments are registered with DFS; however, there

²⁴ s. 497.305(3), F.S. (2003)

are few statutory provisions regarding regulation of them.²⁵ Monument establishments are the only establishments in the death care industry not substantially regulated by a state agency. Thus, many of the bill's provisions relating to monument establishments provide regulation criteria for them.

The bill amends current law to allow companies that own and operate a cemetery to establish reasonable rules for style and size of a monument as long as the rules are applied to all monuments. Current law only authorizes cemetery companies to make such rules.²⁶

The bill also requires companies that own and operate a cemetery to be subject to the prohibitions and requirements contained in the current law relating to installation, care, maintenance, and liability for damage after installation of monuments. Current law only requires cemetery companies to be subject to such prohibitions and requirements.²⁷

The bill provides immunity from liability for owners and operators of a cemetery for improper installation of a monument where the monument is not installed by an owner or operator of a cemetery. Current law only extends immunity to cemetery companies.²⁸

The bill also requires any licensee offering to provide burial rights, merchandise or services to the public to provide each customer a complete description of any monument, marker or memorialization to be placed at the gravesite. Current law does not require a description.

Absent a written extension for delivery, the bill provides failure of a monument establishment to deliver a monument within the timeframe specified in the contract is a breach of contract by the monument establishment. When such a breach occurs, the purchaser can receive a complete refund if the purchaser provides the monument establishment/seller a written request for refund. Upon receipt of a written request for refund by a purchaser, the monument establishment must give the purchaser a complete refund of all monies paid within 30 days. If the monument establishment breaches the monument purchase contract by failing to deliver the purchased goods within the timeframe specified in the purchase contract, the purchaser can purchase a new monument from another monument establishment. Current law requires monument delivery and installation within 120 days of the date of sale unless an extension is requested and does not provide any remedy to a monument purchaser for failure of the monument establishment to deliver the purchased monument.²⁹

The bill also requires all contracts regarding monument purchases to be approved by DFS and to provide a complete description of the monument, marker or related product to be delivered. It is unclear if DFS has to approve each individual contract or approve a template contract. Current law does not require DFS to review contracts relating to monument purchases.

The bill establishes an inspection program for monument establishments to be contained in DFS. No inspection program is in current law. The bill also requires DFS to adopt rules governing monument establishments and mandates the rules established cover specific items. Currently, DFS has general authority to make rules relating to chapter 497 and specific authority to make rules relating to cemeteries and preneed sales, but does not have specific authority to make rules relating to monument establishments.

The bill requires a monument establishment to:

- be located at a specific street address,
- consist of an office and display area for monument products,
- be a full-service establishment open to the public during normal business hours,

²⁵ s. 497.361(1), F.S. (2003)

²⁶ s. 497.325(2)(a), F.S. (2003)

²⁷ s. 497.325(2)(b), F.S. (2003)

²⁸ s. 497.325(2)(b), F.S. (2003); Rule 69K-12.001, F.A.C.

²⁹ s. 497.361(5), F.S. (2003)

- contain facilities to design, install, and inscribe monuments,
- be operated by a registered person or a person holding a valid certificate of authority issued under chapter 497, F.S.
- be compliant with local zoning regulations, and
- be located on property that is not tax-exempt.

Current law requires a monument establishment to be a physical structure at a specific street address. This requirement is deleted in the bill and replaced with the above-delineated requirements.

Preneed Sales Provisions

A growing number of consumers pay for funeral and cemetery services and merchandise in advance, a practice known as “preneed” or “prepaid funeral service arrangement.”³⁰ An estimated 9 to 11 million Americans have spent \$21 billion on pre-need funeral services.³¹ Preneed sales are currently regulated by DFS.

Currently, sellers of preneed contracts:

- must obtain a certificate of authority from DFS,
- must be licensed funeral establishments, licensed cemetery companies, or registered direct disposers,
- must abide by statutes and administrative rules regarding the receipt, deposit, and accounting of preneed sales moneys, and
- are subject to discipline by DFS.

Preneed sales agents are those persons offering preneed contracts to the public or those persons who execute preneed contracts. Currently, preneed sales agents must be registered with DFS.³²

The bill requires the funeral director or direct disposer employing a preneed agent to be responsible for the control and activities of the preneed agent. Currently, although the law is not specific as to the responsibility of funeral directors and direct disposers employing preneed agents, it requires the funeral director or direct disposer to be subject to discipline for any statutory violation of his/her preneed agent. By administrative rule, a preneed agent is required to work under the supervision of a funeral director and the funeral director is responsible for the preneed agent.³³

The bill adds monument establishments as an entity authorized to sell preneed contracts if the establishment obtains a certificate of authority from DFS. Currently, only licensed funeral establishments, licensed cemetery companies or registered direct disposers are authorized to sell preneed contracts.³⁴

A monument establishment is required to register with the new board under DFS as a preneed agent if the establishment wants to sell monuments on a preneed basis. Current law requires registration with DFS for all persons or establishments selling contracts or merchandise on a preneed basis unless the person is a licensed funeral director. Thus, the bill’s registration requirement for monument establishments conforms their registration requirement to the registration requirement for other businesses selling contracts or merchandise on a preneed basis.

³⁰ Special Examination: Florida’s Regulation of the Death Care Industry Has Many Weaknesses, Results of a Joint Examination Conducted by the Office of Program Policy Analysis and Government Accountability and the Auditor General, Report No. 02-21 (March 2002).

³¹ Id.

³² s. 497.439(1), F.S. (2003)

³³ Rule 61G8-28.001, F.A.C.

³⁴ s. 497.405(3), F.S. (2003)

The bill requires the new board approve all preneed contracts written by a monument dealer or establishment. It is unclear if the new board has to approve each individual contract of a template for contracts. Currently, all preneed contracts must be filed with and approved by the board within DFS.³⁵ Thus, the bill makes a conforming change to existing law for monument dealers or establishments selling preneed contracts.

The bill sets financial requirements applicable to all monument establishments. A licensed monument establishment must have a minimum net worth of \$10,000 when a certificate of authority to sell preneed contracts is issued and must maintain this net worth annually. The bill's minimum net worth requirement for monument establishments is different than the current minimum net worth requirement for other entities applying for or renewing a certificate of authority to sell preneed contracts. The minimum net worth requirements for other entities range from \$10,000 to \$100,000, depending on total retail value of all outstanding preneed contracts.³⁶

A monument establishment must submit a recent year-end financial statement with its application for a certificate of authority and at renewal. The financial statement must be prepared in accordance with generally accepted accounting principals. This requirement is consistent with the requirements for other entities authorized to sell preneed contracts; however, the similar requirement for other entities is located in an administrative rule instead of Florida Statutes.³⁷

If the monument establishment does not have the \$10,000 net worth required, does not have sufficient liquid assets to meet current liabilities, or does not appear to have any substantial long-term assets, then DFS must request additional financial information from the monument establishment. An administrative rule requires DFS to request additional financial information for issuance or renewal of a certificate of authority for all other entities not meeting the net worth requirement.³⁸

The bill also allows monument establishments not meeting the financial requirements for an initial certificate of authority or for a renewal of a certificate of authority to submit additional evidence to the board or to agree to additional oversight as a condition of receiving or retaining a certificate of authority. The bill specifies what additional evidence may be submitted in these circumstances or what additional oversight is required. Currently, other entities applying for issuance or renewal of a certificate of authority can submit the same information or agree to the additional oversight; however, the allowance for other entities is found in an administrative rule, not the Florida Statutes.³⁹

The bill provides an annual renewal fee for monument establishments holding a certificate of authority to sell preneed contracts. The renewal fee is based on the establishment's total retail value of all outstanding preneed contracts. The minimum renewal fee is \$500 and the maximum renewal fee is \$1,250. There is no renewal fee set in current law for monument establishments selling preneed contracts because monument establishments are not authorized to sell these contracts. Under current law, funeral establishments, cemetery companies, or direct disposal establishments who have a certificate of authority to sell preneed contracts pay a renewal fee of \$300 - \$18,500, depending on the number of preneed contract sales during the preceding year. Thus, the renewal fees for monument establishments are different than the renewal fees for other preneed sellers.

The bill bases renewal fees for monument establishments on the **dollar retail value of all outstanding preneed contracts**. Renewal fees for other preneed sellers are based on the **number of preneed contract sales during the preceding year**. Thus, the bill proposes a different basis for calculation of renewal fees for monument establishments than for other preneed sellers.

³⁵ s. 497.409(1), F.S. (2003)

³⁶ Rule 69K-5.0016, F.A.C.

³⁷ Rule 69K-5.0016(2), F.A.C.

³⁸ Rule 69K-5.0016(2), F.A.C.

³⁹ Rule 69K-5.0016(5), F.A.C.

Under current law, monument establishments can only sell monuments. In order to do so, the monument establishment must be registered and pay a \$200 registration fee. Accordingly, the bill requires monument establishments wanting to sell preneed contracts to pay additional initial application fees and renewal fees in order to sell preneed need contracts.

The bill prohibits persons without a certificate of authority to sell preneed contracts from advertising to sell or making arrangements to sell a preneed contract or services, merchandise or burial rights. Currently, the law only prohibits persons without a certificate of authority from selling preneed contracts and from selling services, merchandise or burial rights on a preneed basis. Thus, the bill adds an additional prohibition.

The bill requires preneed sales contracts to include language notifying the purchaser of his/her right to a full refund within 30 days after the date of the execution of the contract, except for amounts allocated to burial rights, merchandise or services already used by the purchaser at the time the refund is requested. Under current law, purchasers are entitled to a refund within 30 days except for purchased items already used. Thus, the bill requires language stating current law be put into the preneed sales contract.

Absent a written extension for delivery, the bill provides failure of a preneed seller to deliver a monument within 180 days of interment is a breach of contract by the preneed seller. When such a breach occurs, the purchaser must provide the preneed seller a written request for refund in order for the purchaser to receive a complete refund. Upon receipt of a written request for refund by a purchaser, the preneed seller must give the purchaser a complete refund of all monies paid within 30 days. If the preneed seller breaches the preneed sales contract by failing to timely deliver the purchased goods, the purchaser can purchase a new monument from another monument establishment or preneed seller and have it installed. Current law does not contain any breach of contract provisions relating to preneed sales or remedy to the purchaser for a breach of contract.

When a preneed seller wants to inactivate his certificate of authority to sell preneed contracts, the bill allows the new board to review a preneed seller's trust funds, trust agreements, outstanding preneed contracts and to perform any other necessary actions. Current law requires a review of the preneed seller's trust funds, trust agreements and outstanding preneed contracts upon inactivation of a certificate of authority, but does not give the board authority to perform any other actions or reviews. Thus, if the board wants to review or take action upon inactivation of a certificate of authority, the bill gives the board greater authority to do so; however, because review of certain documents by the board upon inactivation is no longer required, the board may decide not to review any documents or take any action upon inactivation of a certificate of authority.

C. SECTION DIRECTORY:

Section 1. Amends s. 20.121, F.S., creates the new division and the new board.

Section 2. Amends s. 20.165, F.S., abolishes the Board of Funeral Directors and Embalmers currently within DBPR.

Section 3. Substantially amends s. 497.101, F.S., establishes the composition, powers, and duties for the new board.

Section 4. Creates s. 497.102, F.S., establishes the authority of the new board.

Section 5. Creates s. 497.1021, F.S., creates the new division within DFS and establishes the new division's responsibilities.

Section 6. Creates s. 497.1022, F.S., establishes the director of the new division and establishes the new director's responsibilities.

Section 7. Transfers s. 455.226, F.S. to s. 470.0145, F.S. and amends s. 455.226, F.S., makes conforming changes.

- Section 8. Amends s. 497.105, makes conforming changes.
- Section 9. Transfers the duties of the Secretary of DBPR under chapter 470, F.S.
- Section 10. Provides a type-two transfer of the statutory powers, rules, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Board of Funeral Directors and Embalmers and the Board of Funeral and Cemetery Services to the new board.
- Section 11. Abolishes the Board of Funeral and Cemetery Services and the Board of Funeral Directors and Embalmers (effective midnight June 30, 2004).
- Section 12. Repeals s. 470.003, F.S., regarding the membership, appointment, and terms of the Board of Funeral Directors and Embalmers; repeals s. 497.107, F.S., regarding the headquarters for the Board of Funeral and Cemetery Services; repeals s. 497.109, F.S., regarding the membership for the Board of Funeral and Cemetery Services.
- Section 13. Amends s. 470.0365, F.S.; requires deposit of fees collected pursuant to chapter 470 F.S., in the Regulatory Trust Fund in DFS.
- Section 14. Directs the Division of Statutory Revision to provide the relevant Legislative committees with the assistance needed to enable such committees to draft conforming legislation.
- Section 15. Amends s. 470.002, F.S., revises and creates definitions.
- Section 16. Amends s. 470.0085, F.S., revises requirements for the embalmer apprentice program.
- Section 17. Amends s. 470.015, F.S., makes conforming changes.
- Section 18. Amends s. 470.018, F.S., increasing the continuing education requirements for renewal of a direct disposer registration.
- Section 19. Amends s. 470.021, F.S., revises standards of direct disposal establishments and adds standards for cinerator facilities.
- Section 20. Amends s. 470.024, F.S., revises requirements of funeral establishments.
- Section 21. Amends s. 470.025, F.S., creates and revises requirements for cinerator facilities.
- Section 22. Amends s. 470.0255, F.S., creates additional cremation alternatives.
- Section 23. Amends s. 470.028, F.S., establishes responsibilities for control and supervision of preneed agents.
- Section 24. Amends s. 470.029, F.S., revises the due date for final disposition reports.
- Section 25. Amends s. 470.031, F.S., creates an additional prohibition under chapter 470.
- Section 26. Amends s. 470.0355, F.S., creates additional requirements for the identification of human remains.
- Section 27. Amends s. 470.036, F.S., makes conforming changes.
- Section 28. Amends s. 497.005, F.S., revises and creates definitions.
- Section 29. Amends s. 497.305, F.S., establishes additional requirements for bylaws of cemetery companies.
- Section 30. Creates s. 497.306, F.S., creates standards for grave spaces.
- Section 31. Creates s. 497.307, F.S., creates requirements for the identification of human remains with final dispositions after October 1, 2004.
- Section 32. Amends s. 497.325, F.S., to include entities that own and operate a cemetery company
- Section 33. Amends s. 497.333, F.S., requires a licensee under chapter 497 to provide to each customer a complete description of any monument, marker, or memorialization to be placed at a grave site.

Section 34. Amends s. 497.361, F.S., provides a timeframe for delivery of monuments; provides for refunds to purchasers of monument markers; establishes requirements for monument contracts.

Section 35. Creates s. 497.365, F.S., creates regulations for monument establishments.

Section 36. Creates s. 497.371, F.S., creates requirements for monument establishment regarding business location and operation.

Section 37. Creates s. 497.379, F.S., requires licensure of monument establishments selling preneed contracts.

Section 38. Creates s. 497.385, F.S., creates registration requirements for persons selling monuments, markers, and related products.

Section 39. Creates s. 497.391, F.S., requires board approval of preneed contracts written by monument dealers or establishments.

Section 40. Creates s. 497.395, F.S., creates financial requirements and responsibilities and establishes renewal fees for licensed monument establishments selling preneed contracts.

Section 41. Amends s. 497.405, F.S., includes advertising to sell and arrange for preneed contracts in those activities that are prohibited by a person without a valid certificate of authority to sell preneed contracts.

Section 42. Amends s. 497.419, F.S., clarifies that preneed contract cancellation privileges do not extend to burial rights, merchandise, or services that have already been used by the purchaser. Provides breach of contract language regarding failure to install a monument.

Section 43. Amends s. 497.436, F.S., in order to protect the preneed purchaser, allows the board to perform necessary procedures when a preneed seller decides to inactivate his certificate of authority to sell preneed contracts.

Section 44. Provides an effective date of July 1, 2004, unless otherwise expressly provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FISCAL IMPACT ON DBPR

REVENUE			
	FY 2004-05 Amount	FY 2005-06 Amount	FY 2006-07 Amount
License Fees:	(\$842,895)	(\$842,895)	(\$842,895)
Taxes:			
Fines, Misc.	(\$10,285)	(\$10,285)	(\$10,285)
TOTAL:	(\$853,180)	(\$853,180)	(\$853,180)

This negative impact is the result of the abolishment of the current board within DBPR and the transfer of the functions and funds of the current board within DBPR to DFS for use by the new board created

by the bill. According to DBPR, the agency currently licenses and regulates approximately 5,000 individuals and establishments engaged in funeral related services.⁴⁰

FISCAL IMPACT ON DFS

There will be revenues to DFS associated with the implementation of the bill; however, the amount of revenue is uncertain. Revenue will consist of licensing fees, registration fees, renewal fees, fines, settlement monies, etc. The revenue to DFS will be more than the lost revenue to DBPR because DBPR's revenue is generated from regulation of funeral directors, cinerator facilities and direct disposers. DFS's revenue will be generated from regulation of funeral directors, cinerator facilities, direct disposers, monument establishments, cemeteries, and preneed contract sellers. Currently, approximately 5,000 individuals and facilities are licensed and regulated by DBPR and 3,024 individuals and facilities are licensed by DFS.⁴¹

DFS should collect more licensing fees than it presently collects due to the bill's allowance of monument establishments to sell preneed contracts. DFS will collect fees associated with the issuance and renewal of certificates of authority to sell preneed contracts to monument establishments. The amount of fees collected will depend on the number of certificates of authority issued and renewed. Although this number is uncertain, the amount collected is \$500 per certificate issuance and from \$500 to \$1,250 per certificate for renewal. The renewal fee per certificate is uncertain because it is based on a monument establishment's total retail value of all outstanding preneed contracts and this amount will vary from year to year.

The bill's allowance of sales of preneed contracts by monument establishments should allow DFS to collect additional monies for placement into its Preneed Funeral Contract Consumer Protection Trust Fund (trust fund). For each preneed contract sold, the seller has to remit \$2.50 to \$10.00 to the trust fund, depending on the purchase price of the preneed contract sold. The bill should increase sales of preneed contracts because it increases the number of entities allowed to sell preneed contracts. An increase in sales will result in an increase in the trust fund amount. The trust fund is used to provide restitution to preneed contract purchasers due to a preneed contract seller's failure to provide the benefits of a preneed contract or failure to refund the appropriate money if a preneed contract is cancelled by the purchaser.

According to DFS, current licensing fees may have to be increased to meet the operating expenses of the new division because the death care regulation program is self-funded. In order to determine whether an increase is needed, DFS has indicated it will conduct an analysis of the expenditures of the program six months after enactment of the bill.⁴²

2. Expenditures:

FISCAL IMPACT ON DBPR

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Non-Recurring Expenditures	FY 2004-05 Amount	FY 2005-06 Amount	FY 2006-07 Amount
Other Personal Services	0	0	0

⁴⁰ Legislative Bill Analysis from DBPR.

⁴¹ Legislative Bill Analysis of DBPR, Funeral and Cemetery Services Statistics from DFS' website.

⁴² Legislative Bill Analysis of DFS.

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Other (identify)			
Subtotal	0	0	0

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Recurring Expenditures	FY 2004-05 Amount	FY 2005-06 Amount	FY 2006-07 Amount
Salaries/Benefits # of FTE's	(\$68,402) (2.00)	(\$68,402) (2.00)	(\$68,402) (2.00)
Other Personal Services	(\$5,250)	(\$5,250)	(\$5,250)
Expenses	(\$21,566)	(\$21,566)	(\$21,566)
Service Operations (Double Budget)	(\$100,000)	(\$100,000)	(\$100,000)
Unlicensed Activities	(\$5,000)	(\$5,000)	(\$5,000)
Other Data Processing Services – IT	(\$24,855)	(\$24,855)	(\$24,855)
Attorney General Contract	(\$31,000)	(\$31,000)	(\$31,000)
Subtotal	(\$256,073)	(\$256,073)	(\$256,073)

DBPR provided the following explanation of the recurring expenditure chart:⁴³

Professional Regulation Program: One FTE Environmental Health Specialist position with a salary of \$35,133 and \$3,305 in expenses related to this position would be deleted by the bill. Staff positions do not devote all of their time solely to the funeral profession. The staff workload varies due to the unpredictable nature of complaints. Each employee's duties involve multiple professions and costs are allocated to the various professions based on timekeeping data. The direct costs related to the board office are \$5,250 in Other Personal Services and \$14,956 in Expenses.⁴⁴ In addition, the following categories could be reduced: Unlicensed Activities (\$5,000), Service Operations (\$100,000), and Attorney General Contract (\$31,000).

Service Operation Program: This program supports the Board of Funeral Directors and Embalmers by providing services through the Customer Contact Center (CCC), Central Intake, and Testing & Continuing Education service entities. One FTE Regulatory Specialist position with a salary of \$33,268 and \$3,305 in expenses would be reduced in Central Intake under this proposed legislation.

Information Technology Service Entity: A decrease of \$24,855 in the Other Data Processing category.

Non-Operating Expenditures	FY 2004-05 Amount	FY 2005-06 Amount	FY 2006-07 Amount
Service Charge to G R	(\$67,000)	(\$47,000)	(\$67,000)

⁴³ Legislative Analysis of DBPR.

⁴⁴ Per telephone discussion with Robert W. Sloyer, Jr., Sr. Management Analyst II, DBPR on March 2, 2004, expenses include: per diem and travel expenses of board members, expenses associated with holding board meetings, publication expenses, and postage.

Transfer to Admin T F	(\$37,800)	(\$37,800)	(\$37,800)
Subtotal	(\$104,800)	(\$84,800)	(\$104,800)

DBPR provided the following explanation of the non-operating expenditures chart:⁴⁵

Non-Operating Expenditures: The Service Charge to General Revenue expenditure is dependent on the amount of revenue collected each year.⁴⁶ Due to the biennial renewals for the professions currently regulated by DBPR, the amount will vary each year. During a two year cycle the amount will average \$57,000 per year. The transfer to the Administrative Trust Fund varies each year, according to the workload allocation methodology.⁴⁷

FISCAL IMPACT ON DFS

The bill moves the regulation of chapter 470, F.S. from DBPR to DFS by means of a type-two transfer. Accordingly, the following expenditure chart is based upon the assumption that all resources used by DBPR to implement and enforce chapter 470, F.S. will be transferred to DFS. This includes all funds, budget, cash, equipment, records, files, and personnel.⁴⁸

	FY 2003-04 Amount	FY 2004-05 Amount	FY 2005-06 Amount
Recurring Expenditures	0	\$531,783	\$543,364
Non-recurring Expenditures	0	\$ 45,610	0

Because the bill requires the creation of a new division, DFS anticipates five additional positions will be required. These positions are as follows: Division Director, Financial Administrator, Management Analyst I, Administrative Assistant III, and an Accountant II.⁴⁹

Because the bill requires additional regulation of monument establishments, DFS anticipates five additional positions will be required. These positions are as follows: A Financial Specialist (to review the additional certificate of authority applications, monument sales agent applications and review of contracts), two Financial Examiners I and two Financial Examiners II (to develop and implement a monument establishment inspection program and to conduct inspections.)⁵⁰

The recurring expenditures to DFS in the chart above are the salary and benefit amounts for the ten positions needed as a result of the bill.

According to DFS, some cost savings will evolve due to the merger of the two boards, but it will be minimum.⁵¹

DFS will incur expenses associated with rulemaking required by the bill.

⁴⁵ Legislative Analysis of DBPR.

⁴⁶ The service charge is 7.3% of all revenue collected.

⁴⁷ A transfer from the Professional Regulation Trust Fund to the Administrative Trust Fund is required to fund operations, such as legal services, for the specific Board needing the services.

⁴⁸ i.e. professional staff, clerical staff, investigators, attorneys, inspectors, analysts, etc.

⁴⁹ Legislative Bill Analysis from DFS.

⁵⁰ Legislative Bill Analysis from DFS.

⁵¹ Legislative Bill Analysis from DFS.

Board members of the new board created by the bill will have to be selected and trained because there is no provision in the bill for transition of current board members to the new board. Thus, the DFS will incur an expense associated with the training of new board members.⁵²

DFS will incur expenses associated with compensation for per diem and travel for members of the new board. The amount of these expenses will depend on the number and location of the meetings. A meeting schedule has not been set yet because the new board has not been created yet.

DFS will incur expenses associated with preparation for the transition and establishment of the new board. The transition will require a transfer of the licensing data, files, furniture, personnel, trust fund balances, and databases from DBPR to DFS. All pending legal cases, inspection, and investigation cases pending in DBPR will also be transferred to the DFS. Information must be disseminated to the existing registrants, licensees, certificate of authority holders, and the public about the transfer. Application forms, examination, inspection procedures and rules must be revised or promulgated. DFS believes "[i]t will be extremely challenging to implement the type-two transfer by the July 1, 2004 implementation date."⁵³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some direct disposal facilities may incur expenses associated with renovating their existing direct disposal facilities to comply with the bill's requirement that the facility be a minimum of 625 interior contiguous square feet. The current square footage requirement is 625 square feet and some facilities may have 625 square feet, but not 625 interior contiguous square feet.

Some cinerator facilities may incur expenses associated with establishing and drafting written procedures for the removal of remains after cremation. Although the cost of establishing written procedures is unknown and will vary among facilities, the cost should be nominal.

Some funeral establishments may incur expenses associated with establishing a preparation room in the establishment for embalming dead human bodies. Current law does not require a preparation room, although some funeral establishments may already have one in their facility.

Funeral directors, embalmers, and direct disposers will incur an expense of purchasing additional identification tags to be put in the casket, other burial container, or cremation container. Identification tags for placement on the outside of the burial container will also have to be purchased because no tags are currently required for the outside of burial or cremation containers. DFS estimates this expense to be \$6,500 for the industry.⁵⁴

Direct disposal establishments may incur expenses associated with establishing an identification system to track the identity of human remains because an identification system is not currently required by law. The cost of the identification system is unknown and will vary among establishments, but it should be nominal.

⁵² Legislative Bill Analysis from DFS.

⁵³ Legislative Bill Analysis from DFS.

⁵⁴ Identification tags cost approximately 10 – 15 cents each.

Some cemetery companies may incur expenses associated with changing their bylaws to include minimum standards for access for the installation of burial merchandise. The cost of changing the bylaws is unknown and will vary among cemetery companies, but it should be nominal. Cemetery companies already including standards for access should not incur any additional expenses.

Licensed cemetery companies will have to obtain the services of a surveyor licensed under chapter 472, F.S., to have a certified land survey of the undeveloped areas to establish the reference markers required by this bill. DFS estimates surveying and placing reference markers the required 200 feet apart will cost from \$15,000 per acre.⁵⁵

Monument establishments may incur costs associated with the bill's requirement for provision of a complete description of any gravesite monument, marker, or memorialization to the purchaser. Monument establishments are not currently required to provide such information. The cost of providing this information is unknown and will vary among monument establishments, but it should be nominal. Monument establishments already providing the information to purchasers should not incur any additional expenses.

Monument establishments wanting to sell preneed contracts will incur additional costs associated with the initial issuance of a certificate of authority to sell preneed contracts and annual renewal of the certificate. The cost of an initial certificate of authority is \$500. The annual renewal fee will range from \$500 to \$1,250, depending on the establishments total retail value of all outstanding preneed contracts.

D. FISCAL COMMENTS:

For the first year or two, DFS will use the Accenture Licensing Contract to fulfill the licensing requirements of Chapter 470 to ensure a smooth transition and avoid an interruption of services. After the new division understands the licensing needs, an analysis will be conducted to determine if it is cost effective to move the licensing functions to DFS.⁵⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce a county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DFS is given rulemaking authority regarding the regulation of monument establishments.

The rules of the existing board within DBPR are transferred to the new board effective July 1, 2004.

The rules of the existing board within DFS are transferred to the new board effective July 1, 2004.

C. DRAFTING ISSUES OR OTHER COMMENTS:

⁵⁵ Legislative Bill Analysis from DFS.

⁵⁶ Legislative Bill Analysis by DFS.

Section 20.121(2)(h), F.S. provides that Division of Consumer Services within DFS includes a Bureau of Funeral and Cemetery Services. This bill creates a Division of Funeral, Cemetery, and Consumer Services in DFS. If the intent of this legislation is to replace the existing Bureau of Funeral and Cemetery Services with the Division of Funeral, Cemetery, and Consumer Services, the reference to the Bureau in s. 20.121(2)(h), F.S. should be deleted. It is anticipated an amendment will be proposed deleting the reference to the Bureau of Funeral and Cemetery Services within DFS.

This bill provides that “[t]he Governor may suspend or remove any board member.” The Florida Constitution authorizes the Governor to suspend a board member; however, the Senate has the authority to remove the member.⁵⁷ It is anticipated an amendment will be proposed deleting the Governor’s authority to suspend board members and authorizing the Senate to remove board members under certain circumstances.

No trust fund is specified for deposits of settlement monies. It is anticipated an amendment will be proposed specifying a trust fund for deposit of settlement monies.

Although an inspection of each cinerator facility is required by s. 470.021, F.S., no agency is given responsibility for the required inspections.

Section 497.105(3), F.S. should be amended to include chapter 470 because members of the new board are to regulate chapters 497 and 470. As written, new board members are only required to be trained about laws and rules under chapter 497, F.S. Because they must also regulate chapter 470, F.S., the bill should be amended to include training about the laws and rules under chapter 470, F.S. It is anticipated an amendment will be proposed amending the bill to include a reference to chapter 470 in s. 497.105(3), F.S.

The definition of “cremation” in section 497.005(15), F.S. is different than the amended definition of “cremation” in section 470.002(10), F.S. provided by the bill. It is anticipated a conforming amendment will be proposed.

Rule 10D-37.012, F.A.C. referred to in s. 470.021, F.S. has been repealed. It is anticipated an amendment will be proposed deleting the reference to the repealed administrative rule.

It is unclear whether preneed contracts and contracts for monument purchases must be approved by DFS on an individual basis or whether the new board can approve a form contract in lieu of approval of each contract. It is anticipated an amendment will be proposed clarifying that DFS only has to approve a form contract for monument sales and a form contract for preneed sales for each monument establishment.

According to DFS, it will be difficult and challenging to implement the transfer of funds, functions, and responsibilities from DBPR to DFS by the July 1, 2004 effective date.⁵⁸ It is anticipated an amendment will be proposed changing the effective date of the bill to January 1, 2005 to allow DFS more time to implement the changes made by the bill.

Because chapter 455, F.S. applies to all professional boards within DBPR and not just to the Board of Funeral Directors and Embalmers, in order to avoid future questions as to what sections in chapter 455, F.S. are “necessary to enforce the provisions of chapter 470” as the bill requires, it may be advantageous to duplicate in the bill what sections of chapter 455, F.S. are within the exclusive jurisdiction of the new board.⁵⁹

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

⁵⁷ Article IV, section 7, Florida Constitution

⁵⁸ Legislative Bill Analysis from DFS.

⁵⁹ See also Senate Committee on Regulated Industries Interim Report dated November 2003 on cemetery and funeral regulatory boards.