

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 983 Burial Rights
SPONSOR(S): Justice, Galvano, and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 204

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Commerce</u>	_____	<u>Sheheane</u>	<u>Billmeier</u>
2) <u>Judiciary</u>	_____	_____	_____
3) <u>Finance & Tax</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 983 provides that any person who purchases a burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden for the disposition of human remains may, at his or her option, permanently record the purchase of such burial right with the clerk of the court in the county where the burial right is located. The purpose of the recordation is for public notification and to establish a permanent official record in the county; however, such recordation does not create any priority of interest or ownership rights as to the purchaser who records such burial rights.

This bill will have an indeterminate fiscal and workload impact on the clerks of the court because the number of people who record the purchase of their burial rights is not known.

The bill takes effect July 1, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

The bill creates s. 497.310, F.S., to provide that any person who purchases a burial right¹, belowground crypt², grave space³, mausoleum⁴, columbarium⁵, ossuary⁶, or scattering garden⁷ for the interment, entombment, inurnment, or other disposition of human remains may, at his or her option, permanently record the purchase of such burial right with the clerk of the court in the county where the burial right is located. The purpose of such recordation is for public notification and to establish a permanent record in the county; however, the recordation does not create any priority of interest or ownership. It further mandates that the clerk record the evidence of the purchase of such burial right upon receiving payment by the purchaser of a service charge as provided by law.

The effect of this bill would be to enable persons to locate the burial site in the official records of the county in cases where the deceased left no burial records.

Funeral and Cemetery Services

Currently, chapter 497, F.S., provides for the regulation of funeral and cemetery services by the Department of Financial Services (DFS) and the Board of Funeral and Cemetery Services (board) created within the department for that purpose. The board administers and enforces the provisions of the law which is designed to protect purchasers of burial rights, and preneed funeral and burial merchandise and services. All persons operating cemeteries must be licensed by DFS pursuant to ch. 497, F.S., unless specifically exempted.

¹ See s. 497.005(6), F.S. (defining “burial right” as the right to use a grave space, mausoleum, columbarium, ossuary, or scattering garden for the interment, entombment, inurnment, or other disposition of human remains.)

² See s. 497.005(3), F.S. (defining “belowground crypts” as interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as “lawn crypts”, “westminsters”, or “turf-top crypts.”)

³ See s. 497.005(20), F.S. (defining “grave space” as a space of ground in a cemetery intended to be used for the interment in the ground of human remains.)

⁴ See s. 497.005(22), F.S. (defining “mausoleum” as a structure or building which is substantially exposed above the ground and which is intended to be used for the entombment of human remains.)

⁵ See s. 497.005(13), F.S. (defining “columbarium” as a structure or building which is substantially exposed above the ground and which is intended to be used for the inurnment of cremated human remains.)

⁶ See s. 497.005(28), F.S. (defining “ossuary” as a receptacle used for the communal placement of cremated human remains without benefit of an urn or any other container. It may or may not include memorialization.)

⁷ See s. 497.005(32), F.S. (defining “scattering garden” as a location set aside, within a cemetery, which is used for the spreading or broadcasting of cremated remains. It may or may not include memorialization.)

Cemetery companies are authorized to perform the function of the “exclusive initial preneed and at-need sale of interment or burial rights in earth, mausoleum, crypt, niche, or columbarium interment,” however, nothing can limit the right of a person owning interment or burial rights to sell those rights to third parties, subject to the transfer of title by the cemetery company⁸.

Although there is nothing in the law requiring a cemetery company to specifically maintain burial ownership records, there is a current administrative rule requiring companies to make available “lot ownership records” to DFS⁹. Further, ch. 497, F.S., requires cemetery companies to keep all financial records of the company and make such records available at reasonable times for examination by DFS¹⁰. Additionally, the records of every burial in the cemetery must be kept, and s. 497.103(4), F.S., authorizes the DFS to examine the financial affairs of any cemetery company and any preneed sales certificateholder.

This bill will provide another method to determine who has purchased burial rights within the state of Florida.

The bill requires the clerk of the court to record the purchase of any burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden should any person wish to record such a purchase. Currently, there is no specific statutory authority for a county clerk to record documents pertaining to the purchase of a burial right. Charges for services provided by the clerk as to recording documents and instruments are set forth in s. 28.24, F.S. Specifically, the fee for recording, indexing, and filing any instrument not more than 14 inches by 8 1/2 inches is \$5 for the first page and \$4 for each additional page or fraction thereof.

C. SECTION DIRECTORY:

Section 1. Creates s. 497.310, F.S., to permit a person to record the purchase of a burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden for the internment, entombment, inurnment, or other disposition of human remains with the clerk of the court.

Section 2. Amends s. 497.003, F.S., to provide that s. 497.310 applies to all cemeteries in the state.

Section 3. Provides that the act shall take effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

This bill will have an indeterminate fiscal and workload impact on the clerks because there is no way to determine the number of people who will record the purchase of their burial rights. According to representatives with the board, they do not keep information pertaining to the annual number of burial rights sold.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁸ See s. 497.305, F.S., Cemetery companies are authorized to charge a fee up to \$50 to transfer burial rights from one purchaser to another under s. 497.313, F.S.

⁹ Rule 3F-6.005, Fla. Administrative Code.

¹⁰ See s. 497.309(1), F.S.

1. Revenues:
Indeterminate.
2. Expenditures:
Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who decide to record the purchase of their burial rights with the Clerk of the Court will have to pay a nominal fee of \$5 per page (and \$4 for each additional page) under this bill. It is difficult to estimate the number of persons who will record their burial right documents since the recording provisions are optional.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

N/A

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.