

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce	16 Y, 0 N	Sheheane	Billmeier
2) Judiciary		DeJesus	Havlicak
3) Finance & Tax			
4)			
5)			

SUMMARY ANALYSIS

This bill 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.

This bill takes effect July 1, 2004.

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

STORAGE NAME: h0983b.ju.doc
DATE: March 22, 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:

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 DFS for that purpose.¹ 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.²

According to representatives of the board, there are 171 licensed³ cemeteries in Florida and between 2,000 and 3,000 cemeteries which are exempt from licensure requirements under the law. Pursuant to ch. 497, F.S., there are eight exemptions to the provisions relating to licensed cemeteries, including exemptions for certain church, community, fraternal, county, municipal, and family cemeteries.⁴ Board officials state that many of these exempt cemeteries sell burial rights to purchasers that include county, municipal, and religious institution-owned cemeteries. However, community, fraternal, and family-owned cemeteries do not sell burial rights. All licensed cemeteries, including exempt cemeteries, are subject to provisions in the chapter relating to burial record keeping, solicitation practices, illegal tying arrangements, discrimination, and abandoned cemeteries.⁵ Additionally, exempted cemeteries of more than 5 acres are required to submit to investigation and mediation procedures by DFS in the event of a consumer complaint.

To operate a licensed cemetery in this state, a cemetery company must have a site containing 30 contiguous acres, a net worth of at least \$50,000, pay an initial application fee of \$5,000, and an annual

¹ See s. 497.101, F.S. Creates the Board of Funeral and Cemetery Services. Note that funeral directors and direct disposers [cremation] are separately licensed and regulated by the Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation under ch. 470, F.S.

² See s. 497.005(10), F.S. (defining "cemetery" to mean a place dedicated to and used for the permanent interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment or disposition of cremated human remains; or any combination of one or more of such structures or places.)

³ Phone conversation with Diana Evans, Bureau Chief of the Bureau of Funeral and Cemetery Services on March 19, 2004. Three of the large multi-state cemetery companies own over one-half of the 171 licensed cemeteries: Service Corp. International (SCI) owns 49; Stewart owns 21; and, Alderwoods owns 17 cemeteries, according to a representative with the board. The remaining 84 cemeteries are owned by small companies.

⁴ See s. 497.003, F.S.

⁵ See s. 497.003(2), F.S.

license fee based on the cemetery's annual gross sales.⁶ The chapter also requires that cemetery companies must set aside a portion of the cost of their services in a trust to provide for perpetual care and maintenance of grave sites.⁷

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."⁸ 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 company⁹. According to representatives of the board, cemeteries provide consumers with a contract for the purchase of a burial right, grave space, mausoleum, columbarium, ossuary, or other place intended for the disposition of human remains. Some cemeteries also choose to provide a deed and warranty of perpetual care,¹⁰ or a letter acknowledging the sale of the burial right specifying the location of the plot, lot, section and space.

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 DFS.¹¹ Furthermore, 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 DFS.¹² Additionally, the records of every burial in the cemetery must be kept and DFS is authorized to examine the financial affairs of any cemetery company and any preneed sales certificateholder.¹³ However, it has been reported that there are cases where cemetery companies have lost lot ownership records and have even sold lots twice.¹⁴ Currently there is no specific statutory authority for a county clerk to record documents pertaining to the purchase of a burial right.

PROPOSED CHANGES

This bill creates s. 497.310, F.S., to provide that any person who purchases a burial right,¹⁵ belowground crypt,¹⁶ grave space,¹⁷ mausoleum,¹⁸ columbarium,¹⁹ ossuary,²⁰ or scattering garden²¹ for

⁶ See s. 497.201 and 497.213, F.S.

⁷ See s. 497.237, F.S.

⁸ See s. 497.305(c), F.S.

⁹ 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.

¹⁰ Cemeteries no longer convey a "fee simple absolute" (the conveyance of an estate limited absolutely to a person and his or her heirs) in a burial site to a purchaser as they did prior to the late 1950's. Instead, cemeteries convey what is essentially a "right to use" deed in a burial site. The "right to use" deed began to be used after the Legislature enacted a law in 1959 requiring cemeteries to establish a care and maintenance trust fund for the future care and maintenance of cemeteries (Ch. 59-363, L.O.F.).

¹¹ Rule 3F-6.005, Fla. Administrative Code.

¹² See s. 497.309(1), F.S.

¹³ See s. 497.103(4), F.S.

¹⁴ See article "Menorah Gardens cemetery civil trial to open Monday" in the *South Florida Sun-Sentinel*, November 30, 2003. In December 2001, relatives of those buried in Menorah Gardens filed suit alleging the cemetery recklessly or intentionally removed or disturbed human remains, discarded them in nearby woods or buried other remains in the same plots. In December 2003, the world's largest funeral services firm, Service Corporation International (SCI), which owns two Menorah Gardens cemeteries, agreed to pay \$100 million to settle part of the Menorah Gardens class-action lawsuit. Further, SCI settled with DFS and the Florida Attorney General for \$14 million, which was used to pay restitution to victims and fines. In the case of Florida Memorial Gardens, a cemetery owned by SCI, the late Senator Howard Futch had to be reburied after the cemetery mistakenly sold an adjacent plot intended for his wife. The DFS is currently considering administrative action against SCI.

¹⁵ 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.)

¹⁶ 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.")

¹⁷ 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.)

the internment, 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. Essentially, this bill provides 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. Charges for services provided by the clerk as to recording documents and instruments are set forth by statute.²²

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:

1. Revenues:

Indeterminate.

¹⁸ 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.)

¹⁹ 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.)

²⁰ 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.)

²¹ 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.)

²² See s. 28.24(15), F.S. (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.)

2. Expenditures:

See fiscal impact on state government.

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:

1. The Clerk of the Circuit Court has authority under s. 28.222(3)(a), F.S., to record the following instruments: deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, and other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it; extensions, assignments, releases, cancellations, or satisfactions of mortgages and liens; and powers of attorney relating to any of the instruments. Since the clerk of the circuit court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk, this statute may already provide authority to the clerks to record the purchase of burial rights.

2. Consider replacing "it" with "recordation" on line 27 for clarity purposes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES