

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1308

INTRODUCER: Senator Bennett

SUBJECT: Cemeteries / Eminent Domain

DATE: March 27, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Fav/1 amendment
2.			BI	
3.			JU	
4.				
5.				
6.				

I. Summary:

The bill provides that except for road system, transportation corridor, or rights-of-way purposes, property dedicated for cemetery purposes and licensed under part II of ch. 497, F.S., may not be taken by eminent domain if the area of property to be taken is 1 contiguous acre or greater in size, unless the taking entity determines in a public hearing that there are no reasonable alternatives except to use cemetery property for the project. It also prohibits a governmental entity from requiring the transfer of property dedicated for cemetery purposes and licensed under part II of ch. 497, F.S., as a condition of obtaining regulatory approval.

This bill amends section 497.270 of the Florida Statutes.

II. Present Situation:

Chapter 497, F.S., provides for the regulation of cemeteries, cremation services, cemetery companies, and preneed contracts for funeral merchandise or services. Part II of ch. 497, F.S., directly relates to the regulation of cemeteries, providing for the duty of care and maintenance of a licensed cemetery and licensure requirements for cemeteries.

Eminent Domain

The Florida Legislature is vested with the power of eminent domain and constitutional limitations on that power. Article X, s. 6 of the Florida Constitution, provides:

- (a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

- (b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.
- (c) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

Statutory Eminent Domain Procedures

The statutory eminent domain procedures in chapter 73, F.S., include presuit negotiations between the entity exercising its rights and the fee owner, offers of judgment, jury trials, compensation, business damage offers, and costs and attorneys' fees related to the proceeding. Eminent domain actions proceeding to trial require a jury of 12 in the circuit court of the county where the property lies. Eminent domain procedures take precedence over all other civil matters. Supplementary procedures for eminent domain actions in chapter 74, F.S., are commonly referred to as "quick-take" provisions. Under the quick-take provisions, certain entities, including municipalities and public utilities, may take possession of land subject to an eminent domain proceeding in advance of the entry of final judgment. Eminent domain procedures, especially quick-take, offer certain advantages. For the property owner, the only issue in dispute is the amount of compensation for the property taken. Under quick-take, an entity is required to deposit (with the court) an amount not less than the petitioner's estimate of value and, in some circumstances, twice the estimated value of the property until the amount of compensation is determined by the final judgment.

III. Effect of Proposed Changes:

Section 497.270, F.S., is amended to provide that except for road system, transportation corridor, or rights-of-way purposes, property dedicated for cemetery purposes and licensed under this part may not be taken by eminent domain if the area of property to be taken is 1 contiguous acre or greater in size, unless the taking entity determines in a public hearing that there are no reasonable alternatives except to use cemetery property for the project. Also, a governmental entity may not require the transfer of property dedicated for cemetery purposes and licensed under part II of ch. 497, F.S., as of July 1, 2007, as a condition of obtaining regulatory approval.

This bill takes effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

Barcode 544008 by Community Affairs – The amendment removes a date and adds a reference to ch. 497, F.S., to clarify the intent of the bill.