

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 671 Cemeteries
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Nelson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 926

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	21 Y, 0 N, As CS	Tanner	Cooper
2)	State Universities & Private Colleges Policy Committee	10 Y, 0 N	Thomas	Tilton
3)	General Government Policy Council		Tanner	Hamby
4)				
5)				

SUMMARY ANALYSIS

CS/HB 671 provides for an exemption from the rules and regulations pertaining to cemeteries under the Florida Funeral, Cemetery, and Consumer Services Act (Act) under ch. 497, F.S. The exemption allows for a columbarium (a structure used for the inurnment of cremated remains) consisting of 5 acres or less to be located on the main campus of any of the eleven state universities.

Under the bill, a university or a university direct-support organization that establishes a columbarium on its main campus must ensure that the structure is constructed and perpetually kept and maintained in a manner consistent with the intent of the Act. In the event the columbarium is relocated, the university or university direct-support organization must relocate all of the urns and remains that were placed in the columbarium. Universities constructing and operating columbaria under this exemption would have to comply with specified regulations including the maintenance of burial records and anti-discrimination provisions under the Act.

The bill applies to the eleven institutions in the State University System. Proponents of this legislation state that establishing a columbarium would allow alumni and other university supporters to have their cremated remains placed in a columbarium on the main university campus. Other institutions of higher learning which have established columbaria on their premises include Notre Dame, the United States Naval Academy, the University of Richmond, the University of Virginia, and the Citadel.

The bill has no fiscal impact to state or local government.

The bill takes effect July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Cemeteries and Columbaria

Chapter 497 F.S., entitled the Florida Funeral, Cemetery, and Consumer Services Act (Act), provides for the regulation of cemeteries, columbaria, cremation services, cremation practices, cemetery companies, pre-need contracts for funeral services or merchandise, dealers and monument builders, funeral directors, and funeral establishments. The Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services (DFS) vests all authority provided for under the Act.¹

A cemetery is defined as a place dedicated to and used for the permanent interment of human remains or cremated remains.² A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places.³ A columbarium is a structure or building that is substantially above the ground and that is intended to be used for the inurnment of cremated remains.⁴ Thus for purposes of regulation under the Act, a columbarium is considered a cemetery and the relevant portions of ch. 497, F.S., which apply to cemeteries also apply to columbaria.

Under the Act, persons intending to operate a cemetery must apply and be approved for licensure by DFS, have a net worth of \$50,000, establish a care and maintenance trust fund of \$50,000, and hold unencumbered fee simple title to all the cemetery land.⁵ The cemetery property must contain at least 30 contiguous acres and be in compliance with zoning and other provisions under the Act.⁶ The Act establishes time limits for a cemetery company to construct columbaria,⁷ provides standards for construction, alteration and renovation of columbaria,⁸ and mandates that a company which plans to offer for sale space in a section of a columbarium establish a preconstruction trust fund by written instrument.⁹

¹ Section 497.103(1), F.S.

² Section 497.005(11), F.S.

³ *Id.*

⁴ Section 497.005(16), F.S.

⁵ Section 497.263, F.S.

⁶ Section 497.263(2)(g), F.S..

⁷ Section 497.272, F.S.

⁸ Section 497.271, F.S.

⁹ Section 497.272(2), F.S.

Exceptions to Cemetery Regulation under the Act

Currently s. 497.260(1)(a-h), F.S. provides for eight exceptions to the cemetery rules and requirements under the Act:

- Cemeteries of five acres or less owned by a religious institution;
- County and municipal cemeteries;
- Community and non-profit cemeteries providing single-level ground burial and not selling burial spaces or merchandise;
- Cemeteries owned and operated by a religious institution prior to June 23, 1976;
- Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization;
- A columbarium consisting of less than one-half acre contiguous to and owned by an existing religious institution subject to local government zoning;
- Family cemeteries of less than two acres not selling burial spaces or merchandise; and
- A mausoleum of two acres or less contiguous to and owned by a religious institution subject to local government zoning, incorporated at least twenty-five years and possessing sufficient funds in an endowment fund to construct the mausoleum.

Section 497.260(2), F.S., specifies that cemeteries in this state, which includes cemeteries, columbaria and mausoleums operating under the above exceptions, are subject to the following requirements under ch. 497, F.S.: ss. 497.276(1), 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284, F.S. In sequence, these statutes pertain to the following matters:

- Requires every cemetery company to keep records regarding burials in its cemetery as to name, date of burial, and lot, plot, and space of burial;
- Prohibits discrimination by race, color, creed, marital status, sex, or national origin;
- Regulates solicitation of sales of burial rights, merchandise, or services by licensees covered in ch. 497, F.S.;
- Secures the right of persons purchasing a means of disposition¹⁰ of human remains to permanently record said purchase with the clerk of the county where the purchased means of disposition exists, subject to normal record keeping fees in the county of record;
- Forbids a cemetery company from charging a fee for the installation of a monument or marker not purchased from it;
- Prohibits sellers of a grave space from tying that purchase to the purchase of a monument; and
- Outlines provisions for counties and municipalities in dealing with an abandoned cemetery.

State Universities in Florida

Section 1000.21(6), F.S., defines the term “state university” to include the following institutions: the University of Florida, Florida State University, Florida Agricultural and Mechanical University, the University of South Florida, Florida Atlantic University, the University of West Florida, the University of Central Florida, the University of North Florida, Florida International University, Florida Gulf Coast University, and New College of Florida.

University Direct Support Organizations

A “university direct-support organization” is defined as a not for profit Florida corporation organized exclusively to receive, invest, and administer property and to make expenditures for the benefit of a state university that has been certified by a university’s board of trustees to be operating in a manner consistent with the goals of the university.¹¹

Effect of Bill

CS/HB 671 amends s. 497.260, F.S., which provides for exceptions to the rules and regulations governing cemeteries under ch. 497, F.S. The bill exempts from cemetery regulation a columbarium consisting of 5 acres or less which is located on the main campus of a state university as defined in s. 1000.21(6), F.S. A university or a university direct support organization, as defined in s. 1004.28(1),

¹⁰ Disposition of human remains in s. 497.2765, F.S. deals with persons purchasing some means for the deposition of human remains, such as in a cemetery. It does not refer to “final disposition” as defined in s. 497.005(31) F.S.

¹¹ Section 1004.28(1)(a), F.S.

F.S.,¹² that establishes a columbarium under this provision must ensure that the structure is constructed and perpetually kept and maintained in a manner consistent with s. 497.260(2), F.S., and the intent of ch. 497, F.S. In the event the columbarium is relocated, the university or university direct-support organization must relocate all of the urns and remains that were placed in the columbarium.

The effect of the bill is limited to the construction, operation and maintenance of columbaria (consisting of 5 acres or less) which could be located on the main campus of any of the eleven state universities in Florida. Universities constructing and operating columbaria would have to comply with regulations pertaining to maintenance of burial records, discrimination prohibitions, solicitation rules, and other provisions under s. 497.260(2), F.S. (See Background). The actual funeral services and cremation procedures would not be exempt from the provisions of ch. 497, F.S., and would have to be performed by a licensed entity. After the cremation is accomplished, the remains would be forwarded to the university columbarium for inurnment. If the columbarium is relocated, all the related remains and urns would have to be relocated under the provisions of the bill. The bill does not put a limitation on the number of cremated remains that can be placed within a university's columbarium.

Proponents of this legislation state that for many years, the University of Florida has had to address alumni requests for a place on campus for family and friends to place ashes after the death of an alumnus or friend of the institution.¹³ The construction of columbaria on the main campus of the university would provide a needed and desired resource for alumni and friends, and also build a sense of history at the university.¹⁴

Currently the following schools have columbaria on their campus: University of Virginia, the U.S. Naval Academy, Notre Dame, the Citadel, and the University of Richmond.¹⁵

B. SECTION DIRECTORY:

Section 1. Amends s. 497.260, F.S.; exempting from provisions governing cemeteries a columbarium of a specified size located on the main campus of a university that is governed by the Board of Governors; requiring a university or direct-support organization that establishes the columbarium to ensure that is constructed, kept, and maintained in a manner consistent with the intent of ch. 497, F.S.; requiring that the university or direct-support organization relocate all of the urns and human remains that were placed in the columbarium if it is relocated.

Section 2. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The construction, operation, and maintenance of the university columbaria would presumably be self-supporting activity supported by revenues generated from the sales and interest earnings from the niches, and therefore no state funds would be required.¹⁶

¹² A "university direct-support organization" is a non-profit corporation or other organization that conducts business for a state university.

¹³ <http://www.heraldtribune.com/article/20090305/ARTICLE/903050398/2532/NEWS100> (last visited March 23, 2009).

¹⁴ University of Florida Columbarium Legislation information sheet on file with the Insurance, Business and Financial Affairs Policy Committee.

¹⁵ *Id.*

¹⁶ Department of Financial Services Bill Analysis and Fiscal Impact Statement dated Feb. 17, 2009 on file with the Insurance, Business and Financial Affairs Policy Committee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Competition with private sector columbaria firms would likely be minimal. Should columbaria on university campuses become widely used they could possibly benefit private sector firms such as owners of crematoria or sellers of inurnment containers, but there may also be a revenue loss for some licensed cemeteries due to lost business.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2009, the Insurance, Business & Financial Affairs Policy Committee adopted a strike-all amendment introduced by Rep. Nelson. The amendment made the following technical changes to the bill:

- Changed “university” to “state university” and provided reference to the definition in Florida Statutes;
- Changed “direct-support organization” to “university direct-support organization” and provided reference to the definition in Florida Statutes;
- Specified the location in Florida Statutes of the provisions that are applicable to exempt cemeteries and columbaria; and
- Changed “human remains” to “remains.”