

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1115 Cemeteries

SPONSOR(S): Business & Consumer Affairs Subcommittee, Davis

TIED BILLS: **IDEN./SIM. BILLS:** SB 1096

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	12 Y, 0 N, As CS	Whittington	Creamer
2) Economic Affairs Committee		Whittington	Tinker

SUMMARY ANALYSIS

The bill provides that columbariums, a place for the respectful and usually public storage of cinerary urns (i.e. urns holding a deceased's cremated remains), consisting of 5 acres or less located in Volusia County on the property of a motorsports entertainment complex, are exempt from the provisions of Ch. 497, F.S., relating to the requirements for above ground structures or buildings used for the inurnment of cremated remains in cemeteries. The bill provides the exception is subject to certain provisions.

The bill is not anticipated to have a fiscal impact.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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.

A cemetery is defined as a place dedicated to and used for the permanent interment of human remains or cremated remains. 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. 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. 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. The cemetery property must contain at least 30 contiguous acres and be in compliance with zoning and other provisions under the Act. The Act establishes time limits for a cemetery company to construct columbaria, provides standards for construction, alteration and renovation of columbaria, 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.

Cemeteries are regulated under Ch. 497, F.S., which may be cited as the "Florida Funeral, Cemetery, and Consumer Services Act." Ch. 497, F.S., defines "Columbarium" as a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains.

Exceptions to Cemetery Regulation under the Act

Currently s. 497.260(1)(a-h), F.S., provides for nine 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;
- 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; and

- 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.

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.¹ 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 disposition 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.

Motorsports Entertainment Complexes

Section 549.10, F.S., defines a Motorsports entertainment complex as a closed course motorsports facility and includes its ancillary grounds and facilities. The complexes must:

- Have at least 70,000 fixed seats for race patrons;
- Schedule at least 7 days of motorsports events each calendar year;
- Conduct at least four motorsports events each calendar year;
- Serve food and beverages at the facility during the events through concession outlets;
- Engage in tourism promotion; and
- Have permanent exhibitions of motorsports history, events, or vehicles on the complex.

There are currently two Motorsports Entertainment Complexes in Florida:

- Daytona International Speedway, Daytona Beach, Florida
- Homestead-Miami Speedway, Homestead, Florida

Proposed Changes

The bill adds another exemption from the provisions of Ch. 497, F.S., for columbariums, consisting of 5 acres or less located in Volusia County on the property of a motorsports entertainment complex as defined in s. 549.10, F.S.

The bill requires the owner who establishes the columbarium, and subsequent owners of the motorsports entertainment complex, to ensure that the columbarium is constructed and perpetually kept and maintained in a manner consistent with s. 497.260(2), F.S., and the intent of ch. 497.

The bill provides that the exception for a columbarium in Volusia County located on the property of a motorsports entertainment complex is subject to the following provisions:

- The Daytona Beach City Commission by resolution designates the columbarium acreage as a municipal cemetery;
- The Daytona Beach Racing and Recreational Facilities Commission by Resolution consents to the establishment of a columbarium on the property; and

¹ See ss. 497.276(1), 497.152(1)(d), 497.164, 497.2765, 497.278, 497.280, and 497.284, F.S.

- The owner of the motorsports entertainment complex establishes a care and maintenance fund pursuant to s. 497.268, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 497.260, F.S., to add subsection (j).

Section 2 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

A special law, sometimes referred to as a 'local law,' does not apply uniformly throughout the state. Instead, it applies only to designated persons or discrete regions.² Under Article III, Section 10, permitted special laws require published notice or a referendum.

² *Housing Authority v. City of St. Petersburg*, 287 So.2d 307, 310 (Fla.1973).

The bill provides an exception to statutory requirements relating to above ground structures or buildings used for the inurnment of cremated remains in cemeteries for columbariums consisting of 5 acres or less in Volusia County on the property of a motorsports entertainment complex.

Because the bill only applies in Volusia County, it could be considered a special law, requiring published local notice or a referendum.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Business & Consumer Affairs Subcommittee adopted two amendments to the bill and reported the bill favorably as a Committee Substitute. The first amendment added "in Volusia County."

The second amendment provided that s. 497.260(j), F.S., is subject to the following provisions:

- The Daytona Beach City Commission by resolution designates the columbarium acreage as a municipal cemetery;
- The Daytona Beach Racing and Recreational Facilities Commission by Resolution consents to the establishment of a columbarium on the property; and
- The owner of the motorsports entertainment complex establishes a care and maintenance fund pursuant to s. 497.268, F.S.

This analysis is drafted to the Committee Substitute.