

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 Committee on Regulated Industries

BILL: CS/SB 512

INTRODUCER: Regulated Industries Committee and Senator Flores

SUBJECT: Cemeteries

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>BI</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 512 provides an exemption from licensing and regulation by the Board of Funeral, Cemetery, and Consumer within the Department of Financial Services for religious-institution-owned cemeteries, including all associated columbaria and mausoleums. An exempted cemetery must be larger than 5 acres and not exceed 60 acres. The religious institution must limit burial rights within the cemetery to members of the religious institution and their families.

The bill provides that the religious institution must provide an annual certification to the department that it maintains funds in separate accounts. It requires that the funds must be sufficient to cover maintenance costs and preneed agreements, and must be maintained in a financial institution, as defined in s. 280.02, F.S., and must only be used for such purposes. The bill requires that the annual certification must be made under oath and identify the financial institution and the account number where the funds are maintained. The bill provides minimum balances that must be maintained in the accounts. A minimum balance of \$1 million is required for cemeteries that are larger than five acres but do not exceed 30 acres. A minimum balance of \$2 million is required for cemeteries that are larger than 30 acres but do not exceed 60 acres.

The bill also amends s. 497.452, F.S. to expand the existing exemption from preneed sales licensing and regulation, for the religious-institution-owned cemeteries. It deletes the current limitation that the exempted cemetery must have been located in a county with a population of at least 960,000 persons on July 1, 1996. It also deletes the requirement that the exempted cemetery must have engaged in the sale of preneed contracts prior to October 1, 1993.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

The Board of Funeral, Cemetery, and Consumer within the Department of Financial Services (department) is the agency charged with regulating cemeteries, funeral directing, embalming, preneed sales, monument establishments, cremation, crematories, and direct disposition under ch. 497, F.S.¹ The Division of Funeral, Cemetery, and Consumer Services (division) within the department is the administers the provisions of ch. 497, F.S., on behalf of the board.

Part II of ch. 497, F.S., provides for the regulation of cemeteries. Section 497.263(1), F.S., prohibits the operation of a cemetery without first obtaining a license, unless specifically exempted from ch. 497, F.S.

Section 497.103(2)(d), F.S., authorizes the department to determine whether any application or other filing made under ch. 497, F.S., is incomplete and not subject to further processing until made complete. Section 497.103(2)(e), F.S., authorizes the department to initiate and prosecute administrative and judicial action, including taking final action, regarding activity by persons and entities not licensed under ch. 497, F.S., engaging in activity the department deems to be in violation of ch. 497, F.S.

Unlicensed Cemeteries

Section 497.260(1), F.S., exempts the following cemeteries from ch. 497, F.S., and the rules adopted pursuant to the chapter:

- (a) Religious institution cemeteries of less than 5 acres which provide only single-level ground burial.
- (b) County and municipal cemeteries.
- (c) Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise.
- (d) Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976.
- (e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.
- (f) A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter. If the religious institution relocates, the religious institution shall relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the religious institution.
- (g) Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.

¹ Section 497.101, F.S.

(h) A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.

(i) 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). The university or university direct-support organization, as defined in s. 1004.28(1), which establishes the columbarium shall ensure that the columbarium is constructed and perpetually kept and maintained in a manner consistent with subsection (2) and the intent of this chapter.

The Catholic Church has seven dioceses in Florida.² The Archdiocese of Miami, the Dioceses of Orlando, Palm Beach, Pensacola-Tallahassee, St. Augustine, St. Petersburg, and Venice.

The Archdiocese of Miami maintains two cemeteries, Our Lady of Mercy Cemetery in Miami-Dade and Our Lady Queen of Heaven Cemetery in Broward County.³ The cemeteries are approximately 125 acres each. Both cemeteries were consecrated in 1959.⁴ The Diocese of Palm Beach has one cemetery, Our Lady Queen of Peace in Royal Palm Beach.⁵ This cemetery was consecrated in 1974.⁶ These cemeteries are currently exempt under s. 497.260(1)(d), F.S.

The Diocese of St. Petersburg has one cemetery, Calvary Catholic Cemetery in Clearwater.⁷ The Diocese of St. Augustine has two cemeteries, San Lorenzo Cemetery in St. Augustine and St. Mary Cemetery in Korona near Bunnell.⁸ The Diocese of Pensacola-Tallahassee has two cemeteries, Holy Cross Cemetery in Pensacola and Calvary Cemetery in Sunny Hills.⁹

Regulation of Unlicensed Cemeteries

Section 497.260(2), F.S., provides that all cemeteries, including unlicensed cemeteries, in this state must comply with the following requirements:

- The burial records requirements in s. 497.276(1), F.S.;

² See <http://www.nccbuscc.org/about/bishops-and-dioceses/all-dioceses.cfm?zip=&specificstate=FL> (Last visited March 14, 2014).

³ See <http://www.catholichealthservices.org/catholic-cemeteries-media/catholic-health-services.aspx?nd=450&id=13> (Last visited March 14, 2014).

⁴ See <http://www.catholichealthservices.org/catholic-cemeteries/catholic-health-services.aspx?nd=310> (Last visited March 16, 2014).

⁵ See <http://www.ourqueen.org/default.htm> (Last visited March 14, 2014).

⁶ *Id.*

⁷ See <http://calvarycemetery.net/> (Last visited March 14, 2014).

⁸ See <http://www.nflcemeteries.org/> (Last visited March 14, 2014).

⁹ See <http://www.ptdiocese.org/index.cfm?load=page&page=421> (Las visited March 14, 2014).

- The prohibition against refusing to sell or issue a contract or provide services to any person because of the person's race, color, creed, marital status, sex, or national origin in s. 497.152(1)(d), F.S.;
- The regulation of the solicitation of sales of burial rights, merchandise, or services by licensees in s. 497.164, F.S.;
- The provision in s. 497.2765, F.S., that permits person to record with the clerk of the court a permanent record of the purchase of purchase of the burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden with the clerk of the court in the county where the burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden is located;
- The provisions related to the fees and the installation, including markers, for monuments in s. 497.278, F.S.;
- The provision of 497.280, F.S., which prohibits the tying of the purchase of any grave space to the purchase of a monument from or through the seller of any other designated person or corporation; and
- The provisions related to the maintenance of abandoned cemeteries by county or municipalities in s. 497.284, F.S.

Section 497.260(6), F.S., also requires that all cemeteries in this state may not deny burial space to any person because of race, creed, marital status, sex, national origin, or color. However, a cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Religious institution cemeteries may limit burials to members of the religious institution and their families. Section 497.260(6)(c), F.S., provides that any cemetery company or other legal entity which violates the provisions of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.083, and each violation of this section constitutes a separate offense.¹⁰

Investigation and Mediation of Unlicensed Cemetery Complaints

Section 497.260(3), F.S., requires that all exempted cemeteries which are in excess of five acres must submit to the following investigation and mediation procedure by the department in the event of a consumer complaint:

- (a) The exempt cemetery shall make every effort to first resolve a consumer complaint;
- (b) If the complaint is not resolved, the exempt cemetery shall advise the consumer of the right to seek investigation and mediation by the department;
- (c) If the department receives a complaint, it shall attempt to resolve it telephonically with the parties involved;
- (d) If the complaint still is not resolved, the department shall conduct an investigation and mediate the complaint;
- (e) If the department conducts an onsite investigation and face-to-face mediation with the parties, it may charge the exempt cemetery a single investigation and mediation fee not to exceed \$300, which fee shall be set by rule and shall be calculated on an hourly basis; and

¹⁰ Section 775.083, F.S. provides that the penalty for misdemeanor of the second degree is punishable by a fine not to exceed \$500.

(f) If all attempts to resolve the consumer complaint fail, the cemetery shall be subject to proceedings for penalties and discipline under this chapter if it is determined in a proceeding complying with chapter 120 that the cemetery is guilty of fraud, deceit, theft, gross negligence, incompetence, unjustified failure to honor its contracts, or failure to adequately maintain its premises. The department may file and serve on the cemetery an administrative complaint and cause the matter to be prosecuted and may thereafter issue and enforce its final order in the matter pursuant to chapter 120.

According to the division, there are no funds to implement any investigations or mediation of unlicensed cemetery complaints.

Additional Requirements for Unlicensed Religious-Institution-Owned Cemeteries

Section 497.260(4), F.S., provides that any religious-institution-owned cemetery that is exempt under s. 497.206(1)(d), is located in a county with a population of at least 1.3 million persons on July 1, 1996, and was selling merchandise and services to the religious institution's members prior to October 1, 1993, may establish one additional exempt cemetery in such county after December 31, 2020.

Section 497.260(5), F.S., provides that any religious-institution-owned cemetery exempt under subsection 497.260(1), F.S., except those cemeteries qualifying under paragraph (1)(d), which becomes affiliated with a commercial enterprise must meet the requirements of s. 497.263, F.S., which provides for the licensure of cemeteries.

Preneed License Exemption for Religious Cemeteries

Section 497.452(4), F.S., provides that any religious-institution-owned cemetery that is exempt under s. 497.260(1)(d), F.S., is located in a county with a population of at least 1.3 million persons on July 1, 1996,¹¹ and was selling merchandise and services to the religious institution's members prior to October 1, 1993, may establish one additional exempt cemetery in such county after December 31, 2020.

Section 497.005(63), F.S. defines "religious institution" as:

an organization formed primarily for religious purposes that has qualified for exemption from federal income tax as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

¹¹ Miami-Dade County had 1,449,300 persons on July 1, 1996. The next largest county was Broward County with 884,872 on that date. See *Countywide, Unincorporated, and Incorporated Total: 1972-2013*, Office of Economic & Demographic Research, the Florida Legislature at <http://edr.state.fl.us/Content/population-demographics/data/> (Last visited March 11, 2014).

Preneed Contracts

Part IV of ch. 497, F.S., provides for the regulation of preneed sales. Section 497.452(1), F.S., requires a license issued by the board before a person may sell, advertise to sell, or make an arrangement for a preneed contract.

Section 497.005(56), F.S., defines a “preneed contract” as “any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.”

Section 497.452(4), F.S., exempts religious-institution-owned cemeteries, that are exempt under s. 497.260(1)(d), F.S., from preneed sales regulation if the cemetery is in a county with a population of at least 960,000 persons on July 1, 1996,¹² and if such cemetery has engaged in the sale of preneed contracts prior to October 1, 1993, and it maintains a positive net worth at the end of each fiscal year of the cemetery.

III. Effect of Proposed Changes:

The bill creates s. 497.260(1)(j), F.S., to provide an additional exemption from licensing and regulation for religious-institution-owned cemeteries, including all associated columbaria and mausoleums. An exempted cemetery must be larger than 5 acres and not exceed 60 acres.

In addition, the religious institution must limit burial rights within the cemetery to members of the religious institution and their families. The bill does not define the persons who would qualify as a family member of a member of the religious institution.

The bill requires that the religious institution must provide an annual certification to the department that it maintains certain funds in separate accounts. The funds must be sufficient to cover maintenance costs and preneed agreements, and must be maintained in a financial institution, as defined in s. 280.02, F.S.,¹³ and must only be used for such purposes. The bill requires that the annual certification must be made under oath and identify the financial institution and the account number where the funds are maintained.

The bill provides minimum balances that must be maintained in the accounts. A minimum balance of \$1 million is required for cemeteries that are larger than five acres but do not exceed 30 acres. A minimum balance of \$2 million is required for cemeteries that are larger than 30 acres but do not exceed 60 acres.

The requirement of an annual certification would subject the religious-institution-owned cemetery to the jurisdiction of the department in order for the department to determine whether a cemetery certified, or seeking certification, under s. 497.260(1)(j), F.S., is in compliance with all of the requirements of that provision, or would otherwise need to be licensed or cease operations.

¹² *Id.*

¹³ Section 280.02(13), F.S., defines the term “financial institution” to mean, “including, but not limited to, an association, bank, brokerage firm, credit union, industrial savings bank, savings and loan association, trust company, or other type of financial institution organized under the laws of this state or any other state of the United States and doing business in this state or any other state, in the general nature of the business conducted by banks and savings associations.”

The bill also amends s. 497.452, F.S. to expand an existing exemption from preneed sales licensing and regulation, for the religious-institution-owned cemeteries. It deletes the limitation the exempted cemetery must be located in a county with a population of at least 960,000 persons on July 1, 1996. It also deletes the requirement that the exempted cemetery has engaged in the sale of preneed contracts prior to October 1, 1993.

The board would not have the authority to enforce a religious institution's compliance with the provisions of s. 497.260(1)(j), F.S. The requirements of this exemption require self-enforcement by the religious institution. According to the division, the board does not have adequate resources or jurisdiction to perform the audits required to determine compliance. Performing audits would require the division to inspect the accounts, records, and business of the religious institution to the same extent as licensed cemeteries and preneed sellers. However, the bill exempts religious institution-owned cemeteries from such regulation.¹⁴

The bill provides an effective date of July 1, 2014.

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:

The bill would require the department to process the annual certification required under s. 497.260(1)(j)2., F.S. The department may be required to investigate the certification in order determine if the religious-institution-owned cemetery is in compliance with the

¹⁴ 2014 Agency Bill Analysis for SB 512, Division of Funeral, Cemetery, and Consumer Services, Department of Financial Services, January 14, 2014.

requirements of s. 497.260(1)(j)2., F.S. The department may incur costs related to the processing and investigation of the certification. The bill does not require the payment of a fee with the annual certification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the division, the ongoing expansion of U.S. Department of Veteran Affairs (VA) cemeteries is impacting licensed cemeteries because they draw business from licensed cemeteries, and further stresses sales and cash flows at licensed cemeteries. For example, the Florida National Cemetery in Bushnell opened in 1988 and is now the second busiest VA national cemetery in the country with 6,728 interments completed in fiscal year 2011. Of the VA's 131 cemeteries across the nation, Florida is home to six national cemeteries that rank among the top 32 busiest by interment workload. Three new national VA cemeteries have opened in Florida over the past five years: including Jacksonville National Cemetery (2009), Sarasota National Cemetery (2009) and South Florida National Cemetery (2007).

In November 2012, the VA announced that it had purchased land for two additional VA cemeteries in Florida: 250 acres in the Tallahassee area and 318 acres in the Daytona area. These new cemeteries will likely open in 2015.

The division also noted that there has been a decreasing demand for traditional burial spaces due to the increasing demand for cremation services.¹⁵

VIII. Statutes Affected:

This bill substantially amends sections 497.260 and 497.452 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Regulated Industries Committee on March 13, 2014:

The committee substitute (CS) amends 497.206(1)(j), F.S., to provide that the exempted cemetery must be larger than 5 acres and not exceed 60 acres.

The CS does not provide in s. 497.206(2)(j)2., F.S., that the exempt cemetery must maintain escrow funds sufficient to cover maintenance costs and preneed agreement. Instead, it provides in this subparagraph that the religious institution must provide an annual certification to the department that it maintains funds in separate accounts.

¹⁵ Id.

The CS requires that the funds must be sufficient to cover maintenance costs and preneed agreements, and must be maintained in a financial institution, as defined in s. 280.02, F.S., and must only be used for such purposes. The CS requires that the annual certification must be made under oath and identify the financial institution and the account number where the funds are maintained.

The CS provides minimum balances that must be maintained in the accounts. A minimum balance of \$1 million is required for cemeteries that are larger than five acres but do not exceed 30 acres. A minimum balance of \$2 million is required for cemeteries that are larger than 30 acres but do not exceed 60 acres.

B. Amendments:

None.