

**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 Banking and Insurance Committee

BILL: CS/SB 926

INTRODUCER: Banking and Insurance Committee and Senator Altman, and others

SUBJECT: Columbaria at State Universities

DATE: March 4, 2009                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Woodham/Emrich	Burgess	BI	Fav/CS
2.	_____	_____	HE	_____
3.	_____	_____	HI	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Committee Substitute for Senate Bill 926 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<sup>1</sup> consisting of 5 acres or less to be located on the main campus of any of the eleven state universities.<sup>2</sup> 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 s. 497.260(2), F.S.

<sup>1</sup> A columbarium is defined as a structure or building that is intended to be used for the inurnment of cremated remains under s. 497.005(16), F.S.

<sup>2</sup> 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.

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.

This bill substantially amends the following section of the Florida Statutes: 497.260.

## II. Present 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) is charged with “all authority provided for under the Act.”

Section 497.005(11), F.S. defines a cemetery as comprising one of the following:

*“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.”* Section 497.005(16), F.S. defines a columbarium as *“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.<sup>3</sup> The cemetery property must contain at least 30 contiguous acres and be in compliance with zoning and other provisions under the Act.<sup>4</sup> The Act establishes time limits for a cemetery company to construct columbaria,<sup>5</sup> provides standards for construction, alteration and renovation of columbaria<sup>6</sup> 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.<sup>7</sup>

### 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;

<sup>3</sup> Section 497.263, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 497.272, F.S.

<sup>6</sup> Section 497.271, F.S.

<sup>7</sup> Section 497.272, F.S.

- 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.: 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 disposition<sup>8</sup> 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 and University Direct-Support Organizations**

Section 1000.21(6)(a-k), F.S. defines the term “state university” to include the eleven main institutions of higher learning in Florida.<sup>9</sup> A “university direct-support organization” as defined under s. 1004.28(1), F.S., to mean a Florida not for profit entity organized exclusively to receive, invest and administer property and make expenditures for the benefit of a state university and is certified to be operating in a manner consistent with the goals of the university.

### **III. Effect of Proposed Changes:**

**Section 1.** 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

<sup>8</sup> 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.

<sup>9</sup> See fn. 2.

university as defined in s. 1000.21(6), F.S.<sup>10</sup> The bill provides that a university or a university direct- support organization, as defined in s. 1004.28(1), F.S.,<sup>11</sup> which establishes a columbarium 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.

**Section 2.** Provides that the act shall take effect on July 1, 2009.

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 Present Situation). 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.

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. 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. According to these representatives, the construction, operation and maintenance of the columbaria would be a self-supporting activity supported by revenues generated from the sales and interest earnings from the niches, and therefore would not require state funding.

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.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

<sup>10</sup> The definition of “state university” refers to the eleven public institutions of higher learning in Florida. (See fn.2.)

<sup>11</sup> A “university direct-support organization” is a non-profit corporation or other organization that conducts business for a state university.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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. It is noted that the Death Care Coalition of Florida and the Independent Funeral Directors of Florida do not object to this legislation.

C. Government Sector Impact:

The construction, operation and maintenance of the university columbaria would likely 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.

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.)

**CS by Banking and Insurance on March 4, 2009:**

- References the statutory definitions of the terms “state university” and “university direct-support organization.”
- Deletes the reference to the Board of Governors.
- Clarifies that the columbarium is to be constructed, kept and maintained in a manner consistent with s. 497.260(2), F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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