



General Government Policy Council

**Thursday, March 11, 2010
Morris Hall
11:15 AM – NOON**

**Larry Cretul
Speaker**

**Baxter Troutman
Chairman**

Council Meeting Notice

HOUSE OF REPRESENTATIVES

General Government Policy Council

Start Date and Time: Thursday, March 11, 2010 11:15 am

End Date and Time: Thursday, March 11, 2010 12:00 pm

Location: Morris Hall (17 HOB)

Duration: 0.75 hrs

Consideration of the following bill(s):

CS/HB 307 Water Protection and Sustainability Program by Agriculture & Natural Resources Policy Committee, Boyd

CS/HB 527 Florida Funeral, Cemetery, and Consumer Services Act by Insurance, Business & Financial Affairs Policy Committee, Roberson, K.

CS/CS/HB 617 Mining and Extraction Activities by Natural Resources Appropriations Committee, Agriculture & Natural Resources Policy Committee, Bembry

CS/HB 765 Animal Protection by Agriculture & Natural Resources Policy Committee, Garcia, Abruzzo

NOTICE FINALIZED on 03/09/2010 16:14 by TUCK.SHIRLEY

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 307 Water Protection and Sustainability Program
SPONSOR(S): Agriculture and Natural Resources Policy Committee, Boyd
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture & Natural Resources Policy Committee	13 Y, 0 N, As CS	Kliner	Reese
2) Natural Resources Appropriations Committee	12 Y, 0 N	Smith Brown	Dixon
3) General Government Policy Council		Kliner <i>W</i>	Hamby <i>Jab</i>
4)			
5)			

SUMMARY ANALYSIS

The bill amends paragraph (c) of s. 373.1961(3), F.S., providing flexibility to the Northwest Florida and the Suwannee River Water Management Districts in using funds from the Water Protection and Sustainability Trust Fund (WPSTF).

The bill authorizes the Northwest Florida and Suwannee River Water Management Districts to use any funds deposited by the state into the WPSTF to be used for regional water supply planning, water resource development, and water resource projects. Current law requires all such funds be used to assist in funding project construction costs of alternative water supply projects. Current law allows districts that have not completed a water supply plan, or that have not identified the need for any alternative water supply projects, to use these funds for water resource development projects.

Beginning in fiscal year 2009-2010, ch. 2009-68, L.O.F., eliminated documentary stamp tax distributions into this fund. Therefore, no revenues flow into this trust fund at this time. If and when funds are provided by the Legislature to the WPSTF, the bill will allow greater flexibility in the use of said funds by the Northwest Florida and Suwannee River Water Management Districts.

The bill is effective July 1, 2010.

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:

Current Situation

The Florida Department of Environmental Protection (DEP) manages the quality and quantity of water in the state through its relationship with the state's five water management districts (collectively referred to as "the districts"), which are tasked with the preservation and management of Florida's water resources. The districts include the Northwest Florida Water Management District, Suwannee River Water Management District, St. Johns River Water Management District, South Florida Water Management District and Southwest Florida Water Management District.

Chapter 373, F.S., charges the districts with managing regional water supplies, water quality, flood protection, and the protection of natural systems. The Legislature has directed the districts to engage in plan development and implementation, regulation, land acquisition, financial and technical assistance, water resource restoration, water resource development, and other activities to achieve the statutory water management objectives.

In 1998, the water management districts prepared water supply assessments to determine the existing and future water needs and evaluate the adequacy of existing and potential sources to meet the reasonable-beneficial needs for the next 20 years. For those areas where the sources were determined not to be adequate to meet the future needs, the districts were required to prepare regional water supply plans. The Suwannee River Water Management District's (SRWMD) water supply assessment concluded that supplies were adequate to meet the 2020 needs. Periodically, the SRWMD re-evaluates their needs and supplies. The Northwest Florida, St. Johns River, South Florida and Southwest Florida Water Management Districts determined that sources were not adequate to meet all these future needs while sustaining the natural resources. By August 2001, these four districts completed regional water supply plans. Each year the districts are required to prepare a Five-Year

Water Resource Development Work Program that describes implementation strategies for the water resource development component of regional water supply plans.¹

Beginning in fiscal year 2005-2006, the state annually provides a portion of those revenues deposited into the Water Protection and Sustainability Program Trust Fund (WPSPTF) for the purpose of providing funding assistance for the development of alternative water supplies pursuant to the Water Protection and Sustainability Program.² The DEP distributes these revenues into the alternative water supply trust fund accounts created by each district for the purpose of alternative water supply development under the following funding formula:

- Thirty percent to the South Florida Water Management District;
- Twenty-five percent to the Southwest Florida Water Management District;
- Twenty-five percent to the St. Johns River Water Management District;
- Ten percent to the Suwannee River Water Management District; and
- Ten percent to the Northwest Florida Water Management District.

The statewide funds provided pursuant to the Water Protection and Sustainability Program serve to supplement existing water management district funding for alternative water supply development assistance. The districts are required to include the amount of funds allocated for water resource development that supports alternative water supply development and the funds allocated for alternative water supply projects selected for inclusion in the Water Protection and Sustainability Program in their annual tentative and adopted budget submittals. The goal of each district is to match the state funding provided to the district for alternative water supply development. Only the Suwannee River and the Northwest Florida Water Management Districts are not required to meet the match requirements, but they are encouraged to try to achieve the match requirement to the greatest extent practicable.

Section 373.196, F.S., relating to alternative water supply development, mandates cooperative efforts between municipalities, counties, special districts, water management districts, and the DEP, in the development of water supplies and to provide for alternative water supply development.

In regards to funding for alternative water resource projects, subsection (3) of s. 373.1961, F.S., provides that the districts and the state share a percentage of revenues with water providers and users, to be used to supplement other funding sources in the development of alternative water supplies. Public and private water users include local governments, water, wastewater, reuse utilities, municipal, special district, industrial and agricultural water users.

Pursuant to this section, if a district has not completed any regional water supply plan, or the regional water supply plan does not identify the need for any alternative water supply projects, funds deposited in that district's trust fund may be used for water resource development projects, including, but not limited to, springs protection. Presently, the Suwannee River Water Management District is the only district to not complete a regional water supply plan, however, the goal is to have one completed this year. As the lesser funded of the five districts, both the Northwest Florida and the Suwannee River Water Management Districts desire more flexibility in the use of funds from the WPSPTF, if and when funding is restored.

Effect of Proposed Change

¹ Source: <http://www.dep.state.fl.us/WATER/waterpolicy/rwsp.htm>, last reviewed February 8, 2010.

² During the 2009 Legislative Session, SB 1750 eliminated documentary stamp tax distribution into this fund. Currently, no revenues are flowing into the trust fund. The Water Protection and Sustainability Program (s. 403.890, F.S.) was established in 2005 to support water-related programs such as Total Maximum Daily Loads, Surface Water Improvement Management and Disadvantaged Small Community Wastewater Grants. When available, the program also includes funding for alternative water supply development projects such as desalination, reuse and reservoirs.

The bill amends paragraph (c) of s. 373.1961(3), F.S., providing funds deposited in the Water Protection and Sustainability Program Trust Fund to the credit of the Northwest Florida Water Management District and the Suwannee River Water Management District may also be used for regional water supply planning, water resource development, and water resource projects, including, but not limited to, springs protection.

B. SECTION DIRECTORY:

Section 1. Amends paragraph (c) of s. 373.1961(3), F.S., providing flexibility to the Northwest Florida and the Suwannee River Water Management Districts in using funds from the Water Protection and Sustainability Trust Fund.

Section 2. Provides an effective date of July 1, 2010.

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:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Beginning in fiscal year 2009-2010, ch. 2009-68, L.O.F., eliminated documentary stamp tax distributions into this fund. Therefore, no revenues flow into this trust fund at this time. If and when funds are provided by the Legislature to the WPSTF, the bill will allow greater flexibility in the use of said funds by the Northwest Florida and Suwannee River Water Management Districts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require municipalities or counties to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the Agriculture and Natural Resources Policy Committee adopted one amendment offered by the bill's sponsor. The amendment was technical in nature.

CS/HB 307

2010

1 A bill to be entitled
 2 An act relating to the Water Protection and Sustainability
 3 Program; amending s. 373.1961, F.S.; revising requirements
 4 for the expenditure of funds provided pursuant to the
 5 program; specifying authority for the Northwest Florida
 6 Water Management District and the Suwannee River Water
 7 Management District to use such funds for additional
 8 purposes; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraph (c) of subsection (3) of section
 13 373.1961, Florida Statutes, is amended to read:

14 373.1961 Water production; general powers and duties;
 15 identification of needs; funding criteria; economic incentives;
 16 reuse funding.—

17 (3) FUNDING.—

18 (c) The financial assistance for alternative water supply
 19 projects allocated in each district's budget as required in s.
 20 373.196(6) shall be combined with the state funds and used to
 21 assist in funding the project construction costs of alternative
 22 water supply projects selected by the governing board. ~~If the~~
 23 ~~district has not completed any regional water supply plan, or~~
 24 ~~the regional water supply plan does not identify the need for~~
 25 ~~any alternative water supply projects,~~ Funds deposited in the
 26 Water Protection and Sustainability Program Trust Fund to the
 27 credit of the Northwest Florida Water Management District and
 28 the Suwannee River Water Management District ~~that district's~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

CS/HB 307

2010

29 | ~~trust fund~~ may also be used for regional water supply planning,
30 | water resource development, and water resource projects,
31 | including, but not limited to, springs protection.

32 | Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 527 Florida Funeral, Cemetery, and Consumer Services Act
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Roberson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee	12 Y, 0 N, As CS	Vickroy	Cooper
2) Government Operations Appropriations Committee	11 Y, 0 N	Fox	Topp
3) General Government Policy Council		Vickroy <i>LV</i>	Hamby <i>Jab</i>
4)			
5)			

SUMMARY ANALYSIS

Current law provides for the classifications of funeral director only, embalmer only, and combination funeral director and embalmer license. Persons wishing to obtain a funeral director only license must take courses in funeral service arts and mortuary science, the same courses required for combination licenses. Mortuary science courses are required for learning the process of embalming which funeral director only licensees are not permitted to practice. The bill allows for persons wishing to obtain a funeral director only license to take only the funeral service arts courses. This may encourage more individuals to enter the profession as they may not have an interest in learning to embalm dead bodies, but may be attracted to the personal interaction aspect of the industry.

Once an applicant for a funeral director only or combination license completes the required coursework, he or she must then complete a one-year internship under the direct supervision of a licensed funeral director, as well as pass the state and federal laws and rules exam related to the disposition of dead human bodies, and the National Board Examination. The bill would allow applicants who currently hold an associate's degree or higher who are currently enrolled in required coursework and have passed a course in mortuary law to begin their internships. It would also allow for the renewal of the internship for an additional year if the applicant meets certain requirements. Furthermore, the bill would allow interns who have met certain requirements to complete their internships under general supervision. This may be attractive to individuals who may desire to continue working part-time while completing their coursework and may allow interns to receive a higher wage as general supervision would likely increase their value to the funeral establishment.

Current law allows either a direct disposer or funeral director to serve as the direct disposer in charge of a direct disposal establishment. The bill would require a funeral director to serve as the direct disposer in charge. However, there would be a grandfather provision to allow direct disposers currently serving as direct disposers in charge to continue to do so provided they meet certain requirements. This may discourage persons from obtaining a direct disposer license as they will not be able to serve as the direct disposer in charge of a direct disposal establishment.

Current law allows either a funeral director only licensee or combination licensee to serve as the full-time funeral director in charge (FDIC) of a licensed funeral establishment. The bill would require the full-time FDIC to have a combination license. However, there would be a grandfather provision to allow current funeral director only licensees to continue to serve as the full-time FDIC. Especially if the educational provisions of the bill become law, this may be an important requirement as funeral director only licensees will not have any mortuary science background, and funeral establishments practice embalming.

The bill provides for the certain waivers and modifications of ch. 497 in the event of a public emergency. It also modifies some of the health and safety education requirements for licensees, as well as some of the preneed contract provisions. Finally, the bill allows cemeteries to require monument establishments to provide proof of liability as required by law, but prohibits cemeteries from specifying a certain additional amount of insurance, or requiring the monument establishment to obtain a bond.

The bill may have a positive impact on job creation in the funeral directing profession, but may also have a negative impact on the direct disposer profession. It would likely have no fiscal impact on state government beyond the cost of rulemaking and a small increase in revenues generated from additional inspection of funeral homes.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0527d.GGPC.doc
 DATE: 3/9/2010

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:

Education for Funeral Director Only License (Section 16)

Current Situation

For persons wishing to enter the funeral directing profession, three licenses are relevant: funeral director only licenses, embalmer only licenses, and combined funeral director and embalmer licenses. According to the Division of Funeral, Cemetery, and Consumer Services, (hereafter, the Division) there are 78 funeral director only licensees, 39 embalmer only licensees, and 2450 combined funeral director and embalmer licensees within the state of Florida.¹

Persons who wish to gain an embalmer only license must take approved courses in mortuary science,² complete a one-year internship, pass examinations relating to state and federal laws and rules relating to the disposition of dead human bodies, as well as pass the Funeral Services Science section of the National Board Examination prepared by the Conference of Funeral Service Examining Boards (CFSEB).³ These persons do not have to take courses in funeral service arts. Persons who wish to gain a combination license must meet the requirements for an embalmer's license listed above, as well as take approved courses in funeral service arts,⁴ and pass the Funeral Services Arts section of the National Board Examination prepared by the CFSEB.⁵

Similarly, persons wishing to gain a funeral director only license must take classes in both mortuary science and funeral service arts required for the combined funeral director and embalmer license, whether or not the student wishes to gain an embalming license or practice embalming. They must also complete a one-year internship,⁶ pass the state and federal laws and rules examination relating to the disposition of dead human bodies, and the Funeral Services Arts section of the National Board Examination.⁷ This may explain why so few funeral director only licenses exist in Florida; if people must take the required mortuary science courses regardless, they may be more inclined to take the Funeral Services Science section of the National Board Examination. However, some people may be

¹Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm (last visited Jan. 20, 2010).

² Section 497.368(1)(d), F.S.

³ F.A.C. 69K-16.0001.

⁴ Section 497.373(1)(d)(1)-(2), F.S.

⁵ Section 497.376(1), F.S.

⁶ See Funeral Director Internship.

⁷ F.A.C. 69K-16.002.

discouraged from becoming funeral directors because of the mortuary science course requirement as they may enjoy working with families and counseling, but may dislike the science aspect of the industry.

Furthermore, cremation, rather than embalming and traditional burial, has begun to increase throughout Florida and the country.⁸ Approximately 50.47% of all dead bodies in the state of Florida are projected to be cremated this year.⁹ This exceeds the projected national average of 38.15%¹⁰ and represents an increasing percentage of all dead bodies.¹¹ Thus, the industry need for funeral directors to have the scientific background in embalming may be less important than it once was.

Finally, the oldest members of the Baby Boomer population will begin turning 65 in 2011. Florida already has the highest proportion over 65 citizens in the country with 19% of the total population.¹² As these members age and eventually die, the demand for funeral directors may increase.

Effect of Proposed Changes

The bill would not require individuals seeking a funeral director only license to take courses in mortuary science, and they would not be tested on mortuary science subjects, such as embalming. These individuals would still be required to take courses in funeral service arts, and pass the Funeral Services Arts section of the National Board Examination, as well as the state and federal laws and rules examination relating to the disposition of dead human bodies. Thus, individuals who may otherwise be discouraged from becoming funeral directors because of the required science education may be encouraged to become licensed funeral directors. This may have an impact on the overall number of licensed funeral directors in the future and accommodate the expected increase in total number of deaths in the state.

Funeral Director Internship (Section 1, 16, 17, 18)

Current Situation

There are two main ways to become a licensed funeral director. First, a person must first complete the required formal educational courses.¹³ These courses consist of at least sixty hours and up to ninety hours of semester course credit.¹⁴ Thus, the course work would likely take at least two years of fulltime study to complete. Upon completion of the coursework, a person must then complete a one-year internship under the direct supervision of a licensed funeral director,¹⁵ as well as pass the state and federal laws and rules examination relating to the disposition of dead human bodies and the National Board Examination.¹⁶ Unless illness or personal injury prevents him or her, an intern must complete the internship within the year, or else he or she must pay an additional fee and repeat the entire internship.¹⁷ According to Division rule, direct supervision means that the supervising funeral director must be physically present or on the premises at all times while the intern is performing services, and the licensed funeral director must provide both initial direction, as well as periodic inspection of arrangements.¹⁸

⁸ Don Conkey, *As Cremations Rise, So Do Options on Where to Spend*, available at: <http://www.cremationassociation.org> (last visited Jan. 25, 2010).

⁹ U.S. Cremation Statistics, <http://www.nfda.org/consumer-resources-cremation/78-us-cremation-statistics.html> (last visited Jan 20, 2010).

¹⁰ *Id.*

¹¹ Florida Funeral Home Statistics – 1998 through 2008, Funeral Industry Consultants, Inc., 717 (2008).

¹² Frank B. Hobbs, *The Elderly Population*, U.S. Bureau of Statistics, available at: <http://www.census.gov/population/www/pop-profile/elderpop.html> (last visited Jan. 25, 2010).

¹³ F.A.C. 69K-18.002(2).

¹⁴ F.A.C. 69K-15.002(1).

¹⁵ Section 497.375(1)(d), F.S.

¹⁶ Section 497.373(2), F.S.

¹⁷ F.A.C. 69K-18.002(5).

¹⁸ F.A.C. 69K-18.002(3).

Thus, through this method the entire process of becoming a licensed funeral director takes at least approximately three years during which the person will likely not be able to work while completing course work, and must be under the direct control at all times while completing the internship. This may be unattractive to individuals who are interested in funeral directing as second careers, but may not be able to afford to stop working for that amount of time.

The second method for becoming a licensed funeral director is by endorsement.¹⁹ Here, a person who is currently licensed as a funeral director in another state and who has successfully completed a state, regional, or national examination in mortuary science which is substantially equivalent or more stringent than the mortuary science examination required in Florida, may gain a license as a funeral director in Florida.²⁰ Thus, persons who hold licenses in other states who have only successfully completed a state, regional, or national examination in funeral service arts will not be eligible for a license by endorsement.

Effect of Proposed Changes

The bill would allow certain persons to begin their internships before the completion of formal education requirements. Persons currently enrolled in required funeral director courses who already hold an associate degree or higher in any field from a college or university accredited and recognized by the United States Department of Education and who have taken and passed a college credit course in mortuary or funeral service law and ethics may begin their internships. This may attract second career individuals, who otherwise may not have the financial capability to stop working to return to school.

The bill defines direct supervision to require the licensed funeral director to be physically present or on the premises while all tasks, functions, and duties relating to funeral directing are performed. The bill provides the same language for direct supervision of an embalmer intern by a licensed embalmer. It also defines general supervision to require the licensed funeral director to be reasonably available and in the position to provide direction and guidance by being physically present, on the premises, or available by telephone or other electronic communication while all tasks, functions, and duties relating to funeral directing are performed. The bill provides the same language for general supervision of an embalmer intern by a licensed embalmer.

The bill would allow funeral director interns who have graduated from an approved course of study in mortuary science or funeral service arts and passed the laws and rules examination to complete their internship under general supervision if the funeral director in charge of the funeral director internship agency certifies after six months of direct supervision that the intern is competent to complete the internship under general supervision. This may allow them to earn a higher wage for the remainder of their internship as they will be able to carry out more funeral directing functions without the licensed funeral director needing to be as directly involved in their tasks and functions.

Furthermore, the bill would allow funeral director interns who have been certified by the funeral director in charge of the funeral director training agency to have completed at least one half of the required coursework to renew their internship license. This would be attractive to people who began their internships prior to completing all course work under the proposed changes in section 16 of the bill. The bill would also allow the intern to renew his or her license if he or she can demonstrate that the failure to complete was due to illness, personal injury, or substantial hardship, or that he or she is waiting to take the National Board Examination. The licensing authority would be allowed to charge a nonrefundable fee for the renewal of the intern license.

Finally, the bill would allow persons who have otherwise met the qualifications for license by endorsement who have taken and passed a funeral services arts examination that is substantially equivalent or more stringent than the Funeral Services Arts section of the National Board Examination, the examination required in Florida, to gain a funeral director license by endorsement.

¹⁹ Section 497.374, F.S.

²⁰ Section 497.374(1)(b)(2), F.S.

Direct Disposers and Direct Disposal Establishments (Sections 25, 26, 27)

Current Situation

Currently, the state of Florida has 162 licensed direct disposers and 60 direct disposal establishments.²¹ Direct disposers may only remove human remains from the place of death and then transport and store them in a registered direct disposal establishment, secure pertinent information to file the death certificate and permit for direct disposition, and refrigerate remains prior to direct disposition.²² Direct disposition means the cremation of human remains without preparation of the human remains by embalming and without any attendant services or rites such as funeral or graveside services, or making the arrangements for final disposition.²³ Thus, direct disposers may not embalm human remains or engage in any activities considered to be within the realm of funeral directing.²⁴

Direct disposal establishments must maintain a refrigeration facility for the dead bodies²⁵ and may also be an incinerator facility that performs cremations.²⁶ There are currently 142 incinerator facilities in the state,²⁷ and all incinerator facilities must be supervised by a licensed funeral director or licensed direct disposer.²⁸ Of the 82,652 cremations performed in 2008, 8,171 were performed by a direct disposer, or approximately 10% of all cremations.²⁹ Direct disposal establishments must also be supervised by a full-time licensed direct disposer or licensed funeral director acting as a direct disposer in charge of the establishment.³⁰ He or she may only be in charge of one direct disposal establishment.³¹

Beyond application disclosure requirements, an applicant for license as a direct disposer must receive a passing grade in a college credit course in Florida mortuary law and communicable diseases, and pass an examination prepared by the department on state and federal laws and rules relating to the disposition of dead human bodies.³² Thus, compared to the funeral director license and embalmer license, a direct disposer license has relatively less educational requirements.

Finally, to renew a direct disposal license, which occurs every two years, a licensee must have six hours of continuing education credit.³³ Current law states that a course in communicable diseases may be a part of this requirement; however, it is not required.³⁴

Effect of Proposed Changes

The bill would require applicants to receive a passing grade in a college credit course in ethics along with the mortuary law and communicable disease courses to receive their licenses. Similarly, it would also require a course in communicable diseases as part of the continuing education requirement.

The bill would require direct disposal establishments to have a licensed funeral director as the direct disposer in charge of the establishment. However, direct disposers currently serving as the direct disposer in charge of an establishment may continue to do so provided:

²¹ Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm (last visited Jan. 20, 2010).

²² Section 497.601(1), F.S.

²³ Section 497.005(51), F.S.

²⁴ Section 497.601(2)-(3), F.S.

²⁵ F.A.C. 69K-23.004(2).

²⁶ Section 497.604(1), F.S.

²⁷ Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, http://www.myfloridacfo.com/funeralcemetery/fc_who_we_regulate.htm (last visited Jan. 20, 2010).

²⁸ Section 497.606(2)(c), F.S.

²⁹ Florida Direct Disposer Statistics – 2008, Funeral Industry Consultants, Inc., D – 35 and F – 260 (2009).

³⁰ Section 497.604(8), F.S.

³¹ Section 497.604(8), F.S.

³² Section 497.602(3), F.S.

³³ F.A.C. 69K-17.0034(4)(b).

³⁴ Section 497.603(2), F.S.

- they do not become employed by a different direct disposal establishment;
- their license does not become inactive; and
- they meet the naming requirements for issuance, renewal, or notice of change.

Thus, this grandfather provision does not prevent a direct disposer who is presumably qualified to serve as the direct disposer in charge of the establishment from continuing to do so. However, the bill continues to allow either a licensed direct disposer or licensed funeral director to serve as the direct disposer in charge of an incinerator facility. Thus, an incinerator facility, which may also be a direct disposal establishment, would not require a licensed funeral director acting as the direct disposer in charge, but other direct disposal establishments would require a licensed funeral director to serve in that capacity.

The bill may discourage people from becoming licensed as a direct disposer as they will not be qualified to serve as the direct disposer in charge of a direct disposal establishment. As direct disposers represent approximately 10% of all cremations performed in the state³⁵ and cremation rates are expected to increase,³⁶ this may result in more concentrated profits for existing direct disposal establishments and existing direct disposers, or it may make it more difficult to obtain a cremation from a direct disposal establishment.

It is also unclear if there will be a benefit to industry service or quality by requiring a licensed funeral director to act as the direct disposer in charge. There may be some benefit from the counseling and personal interaction funeral directors are trained for, however, if the education requirements for direct disposers and funeral director only licenses outlined above become law, a person with a funeral director only license will have the same communicable disease background as direct disposers and will not have any other mortuary science background. Thus, both licensees will have the same expertise in the area of communicable diseases and state and federal laws and rules relating to the disposition of dead human bodies, which are the most directly applicable expertise requirements for direct disposers.

Preneed Contracts (Sections 22, 23, 24)

Current Situation

The Florida legislature established the Preneed Funeral Contract Consumer Protection Trust Fund (hereafter, the Trust Fund) to provide restitution for people who entered into a preneed contract and never received the contracted services or merchandise.³⁷ A preneed contract is essentially a contract for future funeral services or merchandise, or burial services or merchandise that is paid for in advance.³⁸ Current law allows the licensing authority to have rulemaking authority to determine what forms, procedures, and information is needed to support a claim for restitution under the Trust Fund.³⁹

Preneed licensees, persons licensed to sell preneed contracts,⁴⁰ often charge the purchaser of a preneed contract a processing, filing, or archiving fee. There is currently no expressed regulation of processing fees for preneed contracts. Under current law, a specified percentage of the proceeds of the sale of a preneed contract must be placed in trust, but can be withdrawn as and when the goods or services in the preneed contract are actually provided.⁴¹ They must be placed in trust to ensure that the seller of the contract does not simply take the purchaser's money or defraud him or her in some way. However, a processing fee related to the sale of the preneed contract is considered earned almost immediately and so may be withdrawn almost immediately. Thus, preneed licensees have an

³⁵ Florida Direct Disposer Statistics – 2008, Funeral Industry Consultants, Inc., D – 35 and F – 260 (2009).

³⁶ U.S. Cremation Statistics, <http://www.nfda.org/consumer-resources-cremation/78-us-cremation-statistics.html> (last visited Jan. 25, 2010).

³⁷ Section 497.456(6), F.S.

³⁸ Section 497.005(54), F.S.

³⁹ Section 497.456(13), F.S.

⁴⁰ Section 497.452(1)(a), F.S.

⁴¹ Section 497.458(1), F.S.

incentive to cite as much of the contract price as possible within the processing fee so that the money may be withdrawn immediately, rather than when the services or merchandise are actually disbursed.

Current law requires that alternative preneed contracts require the purchaser of the contract make all payments required by the contract directly to the trustee, or its qualified servicing agent, and deposit the funds in the state of Florida.⁴² Furthermore, the preneed trust is required to be a trust company operating pursuant to ch. 660, a national bank or state bank holding trust powers, or a federal or state savings and loan association holding trust powers.⁴³ However, these types of firms sometimes have no physical offices in which to deposit the funds within the state of Florida. Thus, they are not eligible to receive the trust deposits. The utility of this requirement may have decreased in recent years as the result of internet banking.

Finally, current law requires disbursement of funds by the trustee to the person issuing or writing the preneed contract upon receipt of the contract beneficiary's death certificate.⁴⁴ There is also no provision directing the trustee on what to do with the funds in the event of partial performance.

Effect of Proposed Changes

The bill requires that claims by consumers or licensees against the Trust Fund be sworn or affirmed and notarized. This may lessen fraud on the part of either the consumer making the claim, or the licensee against whom the claim is made.

The bill specifically authorizes a preneed licensee to charge a processing, filing, archiving, or other administrative fee related to the sale of a preneed contract. It requires the preneed licensee to disclose these charges to the purchaser of the contract and include them on a standard price list. Finally, it exempts these charges from the trust deposit requirements that are required for the funeral service or merchandise or burial service or merchandise provisions of the preneed contract. It is unclear whether this provision will lessen the instance of fraud. It may only further encourage abuse by preneed licensees as the funds will not go into the trust at all.

The bill allows persons to deposit funds into trusts in banks with physical locations outside the state of Florida. This will increase the number of banks that are eligible to hold funds in trust.

Finally, the bill allows the trustee to disburse funds to the person issuing or writing the preneed contract upon the trustee's receipt of satisfactory evidence that the preneed contract has been performed in whole or in part, not solely because the trustee has received the contract beneficiary's death certificate. The bill grants rulemaking authority to the licensing authority to define what satisfactory evidence means. Furthermore, it provides that in the event of partial performance, the trustee shall disburse only the amount that covers the portion of the contract actually performed.

Funeral Director in Charge and Funeral Directing Activities (Sections 15, 21)

Current Situation

Current law states that phoning in or faxing of obituary notices, ordering flowers, delivering death certificates, clerical preparation of death certificates, furnishing standard price lists, removing or transporting dead bodies, arranging or coordinating with removal services, or refrigeration or embalming facilities, making preneed contracts, or performing functions of cemetery or crematory personnel do not constitute activities of a funeral director.⁴⁵

Current law also requires a licensed funeral establishment to have one full-time funeral director in charge (FDIC). This person may hold a funeral director only license and may not be a full-time FDIC

⁴² Section 497.464(3), F.S.

⁴³ Section 497.464(2), F.S.

⁴⁴ Section 497.464(7), F.S.

⁴⁵ Section 497.276(2), F.S.

for any other funeral establishment or direct disposal establishment.⁴⁶ Current law also states that the licensed funeral establishment must have a licensed funeral director reasonably available to the public during normal business hours.⁴⁷ Division rule requires the full-time FDIC to be responsible for making sure the funeral establishment and all persons employed in the establishment comply with all applicable laws and rules of the Board of Funeral, Cemetery, and Consumer Services.⁴⁸ However, it is unclear whether the Division has rulemaking authority to establish this requirement for the full-time FDIC.

Effect of Proposed Changes

The bill would add electronic transmission of obituary notices and the clerical processing of death certificates to the activities that are not considered to constitute activities of a funeral director. While these additions may be unnecessary as the inclusion of other forms of transmission of obituary notices are already listed and preparation of death certificates may encompass processing, these additions will at least clarify what other duties non licensed funeral establishment personnel may engage in.

The bill would require the full-time FDIC to hold a combination funeral director and embalmer license. However, persons currently serving as full-time FDICs who currently hold a funeral director only license may continue to serve as the full-time FDIC for a funeral establishment if:

- the funeral establishment and the funeral director both hold active and valid licenses; and
- the funeral director's name was included in the funeral establishment's most recent application for issuance or renewal of its license, or was included in the establishment's report of change.

This grandfather provision would allow full-time FDICs who already have the experience serving as full-time FDICs to continue to do so, but would prevent persons without the knowledge or expertise in embalming from being in charge of the funeral establishment. Especially if the education requirements for funeral director only licenses outlined above become law, this may be an important precaution in ensuring industry safety and compliance with rules and regulations related to embalming and handling of dead human remains as funeral director only licensees will not have the background in mortuary science to ensure compliance.

Finally, the bill makes clear that the full-time FDIC is responsible for ensuring that the facility, its operation, and all persons employed in the facility comply with all applicable state and federal laws and rules. This language mostly tracks the Division rule, however, it requires the full-time FDIC to not only ensure compliance with Board laws and rules, but all state and federal laws and rules. However, while the Division rule states that this full-time FDIC responsibility shall not be construed to absolve funeral establishments or other persons from liability for their violations of such laws and rules, the bill has no such language. Thus, it is unclear whether this provision may make full-time FDICs liable for violations, but not funeral establishments themselves.

Public Emergencies (Sections 3, 7, 10)

Current Situation

Current law does not provide procedures or rulemaking authority for the licensing authority to waive or modify any provisions of chapter 497 in the event of an emergency. However, current law does provide that limited licenses may be issued during times of "critical need."⁴⁹ These limited licenses are for retired professionals who have an embalmer's license, funeral director only license or combination license and would only be valid during the time of critical need.⁵⁰ The rule does not specify that the retirees must be from the state of Florida.

⁴⁶ Section 497.380(7), F.S.

⁴⁷ Section 497.380(7), F.S.

⁴⁸ F.A.C. 69K-21.007.

⁴⁹ Section 497.143(5), F.S.

⁵⁰ F.A.C. 69K-25.004.

Effect of Proposed Changes

The bill allows the licensing authority to temporarily waive any provisions of chapter 497 during a state of emergency declared by the Governor. Furthermore, it specifies that retired Florida licensees, rather than any retired licensee, as well as active licensees from other states be allowed to serve during times of critical need. It also deletes the fee requirement for these limited licenses in all circumstances. Finally, it grants rulemaking authority to the licensing authority to temporarily waive provisions, and it grants rulemaking authority to the Department of Financial Services to establish rules and procedures for the event of an emergency situation. It specifies that the emergency rules and procedures may be adopted prior to an actual emergency and may stay in effect for a limited time after the state of emergency is terminated.

Placement of Monuments in Cemeteries (Section 14)

Current Situation

A cemetery company may not require any person or firm that installs, places, or sets a monument to obtain any form of insurance, bond, surety, or make any form of pledge, deposit, or monetary guarantee as a condition for entry on or access to cemetery property.⁵¹ Both cemeteries and monument establishments sell and install grave markers and monuments. Thus, cemeteries have a financial interest in restricting monument establishments' access to cemeteries. They also have an interest in ensuring that their property is not damaged by monument establishments that deliver, install, place, or set monuments on their property. The prohibition on requiring insurance, bonds, pledges, etc. from monument establishments by cemeteries seems to indicate a legislative preference for unrestricted access the cemeteries and in turn, lower prices charged by monument establishments for their products. As of March 1, 2008 there were 99 licensed monument establishments and 172 licensed cemeteries.⁵²

Effect of Proposed Changes

The bill would require people or firms delivering, installing, placing, or setting a monument to show proof of liability insurance coverage and worker's compensation insurance coverage as required by law. The cemetery may not specify the amount of insurance required or require the person or firm to obtain a bond, surety, or make any form of pledge, deposit, or monetary guarantee as a condition for entry or access. This means cemeteries would not be allowed to require more insurance than the law already requires.

Thus, the bill would allow cemeteries some assurances against property damage as the result of delivery, installation, placement, or setting of the monuments, but would also prevent cemeteries from requiring more insurance than is required by law and thereby restricting monument establishments' access to the property.

Process Fees Charged to Customers by Cemeteries (Section 13)

Current Situation

Current law prohibits cemeteries from charging fees for anything but the sale of burial rights, burial merchandise, and burial service except for:

- Opening and closing a grave or vault installation;
- Transferring burial rights;
- Sales, documentary excise or other taxes actually and necessarily paid to a public official;

⁵¹ Section 497.278(3), F.S.

⁵² Division of Funeral, Cemetery & Consumer Services, Who the Board Regulates, http://www.myfloridafo.com/funeralcemetery/fc_who_we_regulate.htm (last visited Jan. 20, 2010).

- Credit lit and credit disability insurance; and
- Interest on unpaid balances pursuant to ch. 687.⁵³

Effect of Proposed Changes

The bill allows for the charge of a processing fee to customers by cemeteries for processing, filing, and archiving, and other administrative duties. These fees must be disclosed to the customer and must be shown on the cemetery's standard price lists.

However, the bill stipulates that these processing fees may not be charged in regards to sales contracts for the opening and closing of a grave or other burial right, or for the installation of a vault in a grave for which burial rights were previously purchased. This provision appears to address preneed contracts and prohibits that processing fees may be charged by cemeteries for these kinds of sales contracts.

Finally, the bill states that the charges are not subject to trusting under section 497.458, F.S. This may be redundant as the language of the bill seems to indicate that no processing fees may be charged for these forms of preneed contracts, and the trusting requirement of section 497.458, F.S. only applies to preneed contracts for the purposes of the Trust Fund.

Disclosure of Criminal Record (Sections 5, 6, 9)

Current Situation

Current law requires that all licensees disclose their criminal records when applying for a license.⁵⁴ The licensee must disclose crimes for which the person was convicted of, or plead no contest to.⁵⁵ The crimes that are required to be listed are:

- Any felony or misdemeanor, no matter when committed, that was directly or indirectly related to or involved any aspect of the business of funeral directing, embalming, direct disposition, cremation, preneed sales, funeral or cemetery establishment operations, or cemetery monument or maker sales or installation;
- Any felony committed immediately preceding twenty years before the application; and
- Any misdemeanor committed immediately preceding five years before the application.⁵⁶

Similarly, being convicted, or found guilty of, or entering a plea of no contest to, regardless of the adjudication, for a crime related to the practice of the licensee's profession constitutes grounds for disciplinary action under ch. 497.⁵⁷

While current law does require disclosure of criminal records,⁵⁸ it does not specify what the consequences of having a criminal record to the applicant for an initial or renewed license are or should be.

Effect of Proposed Changes

The bill would require the disclosure of all crimes to be listed under section 497.142(10)(c), F.S. for which the applicant plead guilty. This may represent the correction of a drafting error as generally if a person is required to disclose crimes for which he or she was convicted of, or plead no contest to, he or

⁵³ Section 497.277(1)-(5), F.S.

⁵⁴ Section 497.142(10)(a), F.S.

⁵⁵ Section 497.142(10)(b), F.S.

⁵⁶ Section 497.142(10)(c), F.S.

⁵⁷ Section 497.152(2), F.S.

⁵⁸ Section 497.142(10)(a), F.S.

she would seem to need to disclose crimes for which he or she plead guilty to as well.⁵⁹ Section 9 of the bill also adds a plea of guilty to the list of specified crimes that are grounds for disciplinary action under ch. 497.

Furthermore, the bill would require licensees to disclose crimes for which he or she has been convicted, or has entered a plea of guilty or no contest, since the date of initial application or renewal of a license, depending upon which is the most recent. Thus, a current licensee will not be required to continue to disclose crimes he or she has already disclosed on a previous application or renewal form.

The bill would prohibit the licensing authority from issuing or renewing a license to an applicant who has a criminal record that is required to be disclosed, unless the applicant demonstrates that the issuance or renewal of the license does not constitute a danger to the public. Thus, this section specifies the consequences of having a criminal record. Currently, the statute provides that during a pre-licensing investigation, the Department may require an employee or principal of an applicant to disclose his or her criminal records if the Department has grounds to believe the applicant's relationship with that employee or principal may render the applicant a danger to the public if the license is issued.⁶⁰ Thus, the bill provides the same language for both issuing and renewal of licenses.

Health and Safety Education (Sections 11, 20, 28)

Current Situation

Current law states that all individuals not licensed under ch. 497 who intend to be employed as operational personnel affiliated with a direct disposal establishment, incinerator facility, removal service, refrigeration facility, or centralized embalming facility, or who intend to be involved in the removal or transportation of human remains must complete one course approved by the licensing authority on communicable diseases within ten days of beginning employment.⁶¹

Current Division rules define operational personnel as "individuals who come in direct contact with or remove or transport dead human remains, or those individuals who come in direct contact with blood or other body fluids."⁶² However, the statute itself does not define operational personnel.

Current law also states that as part of the continuing education credit requirement, licensees must complete a course on communicable diseases that specifically includes a course on HIV/AIDS.⁶³ HIV/AIDS is one type of communicable disease.⁶⁴

Effect of Proposed Changes

The bill limits the education requirement to operational personnel "who have direct contact with" human remains. Thus, the bill may relax the requirements under current Division rule as the rules also specify direct contact with blood or other body fluids.

The bill would delete the separate requirement that continuing education credit requires a course dealing specifically with HIV/AIDS. It would not repeal the requirement for a course on communicable diseases in general, however. As HIV/AIDS is one particular type of communicable disease, it appears that a separate distinction and course focus may not be necessary.

⁵⁹ Throughout Florida Statutes this seems to be the norm. For example, section 633.081(2)(b), F.S. excludes all persons who have been found guilty of, or having pled guilty or nolo contendere to, (no contest to) a felony or crime punishable by imprisonment of one year or more under federal law or the state law of any state from being certified to conduct a fire safety inspection.

⁶⁰ Section 497.142(10)(f), F.S.

⁶¹ Section 497.162, F.S.

⁶² F.A.C. 69K-15.005.

⁶³ Section 497.378(1), F.S.

⁶⁴ Center for Disease Control and Prevention, Basic Information Topics: HIV/AIDS, <http://www.cdc.gov/hiv/topics/basic/index.htm> (last visited Feb. 10, 2010).

Board Composition and Continuing Education Requirement for Licensees (Sections 2, 8)

Current Situation

The Board of Funeral, Cemetery, and Consumer Services consists of ten members, nine of whom are nominated by the Chief Financial Officer and appointed by the Governor, and one of whom must be the State Health Officer or his or her designee.⁶⁵ Current law states that one member of the board must be a monument establishment licensee.⁶⁶ As monument licensees are often corporations, not individual people, this seems to indicate that a corporation may be appointed as a board member.⁶⁷

The Board is authorized by rule to provide up to five hours of continuing education credit per continuing education reporting period for licensees who attend board meetings.⁶⁸ All licensees governed by ch. 497 are required to complete Board approved continuing education.⁶⁹ Current law limits the number of continuing education credit hours a licensee may receive by attending a board meeting to five.⁷⁰ Current law also states that the Board may limit the number of times such credit may be utilized by the licensee.⁷¹ Finally, current law states that the Board may require more than five hours of attendance to receive five hours of credit.⁷²

Currently, funeral directors and embalmers are required to complete twelve hours of continuing education credit, while registered direct disposers are required to complete six hours.⁷³ Of the required credits, one credit must be a course in communicable disease and HIV/AIDS, while all other credits may be obtained on various subjects related to the various licenses, including ethics, rules, basic theory and practice, and technical subjects, including mortuary science.⁷⁴

Effect of Proposed Changes

The bill inserts the words “a principle of” before “a monument establishment licensed under this chapter as a monument builder” to indicate that a single person, rather than a corporation, shall be appointed to the Board. Chapter 497 defines “principle” as:

“The sole proprietor of a sole proprietorship; all partners of a partnership; all members of a limited liability company; regarding a corporation, all directors and officers, and all stockholders controlling more than 10 percent of the voting stock; and all other persons who can exercise control over the person or entity.”⁷⁵

The bill also liberalizes the requirements for obtaining continuing education credit hours by attending board meetings. The bill deletes language prohibiting licensees from obtaining more than five continuous education credit hours, as well as the limitations on the number of times such credit may be utilized by the licensee, and the ability of the Board to require more than five hours of attendance to get five hours of credit.

While this provision may encourage licensees to participate and be more active within the profession through attendance at the meetings, it may also decrease the amount of technical, ethical, and practical

⁶⁵ Section 497.101(1), F.S.

⁶⁶ Section 497.101(2), F.S.

⁶⁷ See Section 497.141(12)(b), F.S.

⁶⁸ Section 497.147(5), F.S.

⁶⁹ F.A.C. 69K-17.0034(2).

⁷⁰ Section 497.147(5), F.S.

⁷¹ Section 497.147(5), F.S.

⁷² Section 497.147(5), F.S.

⁷³ F.A.C. 69K-17.0034(4).

⁷⁴ Florida Department of Financial Services, CE Requirements, *available at*: https://facs.fldfs.com/public/pb_cereq_lst.asp (last visited Feb. 2, 2010).

⁷⁵ Section 497.005(56), F.S.

educational credit licensees obtain. This may negatively impact the ongoing expertise of the licensees within their profession.

Online Licensing Systems (Section 5)

Current Situation

To apply for an initial or renewal license under ch. 497, applicants must fill out paper applications and mail them to the Division.⁷⁶

Effect of Proposed Changes

The bill would grant rulemaking authority to the licensing authority to require applicants to apply for an initial or renewal license in an online format. It also specifies that the online electronic format for renewal of a license must not allow submission of an improperly prepared renewal application and that the applicant must be allowed to print a receipt of the properly prepared renewal application.

Finally, the bill allows the Funeral and Cemetery Board to impose up to a \$25 fee on licensees filing paper applications whenever an online system becomes available. This fee may incentivize applicants to utilize the available online system.

Display of License (Sections 19, 21, 27)

Current Situation

Current law requires licensed funeral directors and embalmers to display their licenses and a recent photo so that they are visible to the public and may facilitate inspection by the licensing authority.⁷⁷ Although the statute does not specify how old the photo may be, Division rules require the photo to be less than two years old.⁷⁸

Furthermore, Division rules state that funeral establishments must have their current licenses displayed so they are visible to the public and to facilitate inspection by the licensing authority.⁷⁹ Rules also require licensees employed at multiple establishments to have a copy of their license readily available at all locations.⁸⁰ This indicates that an original license certificate is not necessary for display purposes. It also appears that the rules as written do not require the display of copies of licenses for licensees employed at multiple establishments.

Effect of Proposed Changes

Although section 497.376(2) requiring the display of each type of license under ch. 497 is deleted, it is reinserted into section 497.380 in a modified form. The bill specifies that a funeral establishment and each funeral director and embalmer working at the establishment must display their current license in a conspicuous place visible to the public and to facilitate inspection by the licensing authority. It requires funeral directors and embalmers employed at the establishment to display photos of themselves that are no more than six years old, and it requires licensees who are employed by more than one establishment to display copies of their licenses and photos at those additional establishments.

Thus, the bill appears to allow the display of older photos than are currently allowed by rule and requires the actual display of copied licenses and photos for licensees employed at more than one establishment.

⁷⁶ F.A.C. 69K-1.001.

⁷⁷ Section 497.376(2), F.S.

⁷⁸ F.A.C. 69K-21.005(3).

⁷⁹ F.A.C. 69K-21.005(1).

⁸⁰ F.A.C. 69K-21.005(2).

Inspection Fees (Section 4)

Current Situation

Currently a direct disposal establishment licensee is charged for the annual inspection performed by the Division.⁸¹ Additional inspections are required when a direct disposal establishment relocates, there is a consumer complaint filed, or there is a change in ownership or control of the establishment.⁸² However, current law does not allow for an inspection fee on the additional inspection. Thus, the Division incurs additional costs for inspections of these establishments.

Effect of Proposed Changes

The bill would authorize the licensing authority to impose an inspection fee for conducting inspections of establishments that have changed ownership or control, or changed location. However, it would not allow the licensing authority to charge a fee for an inspection because of a consumer complaint. This would allow the licensing authority to recoup the cost of the additional inspections and could not exceed the amount of the licensee's annual inspection fee.

B. SECTION DIRECTORY:

None.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There may be a modest increase in revenues as a result of the additional inspections of funeral homes under section 4. The bill may also result in some cost savings because of the emphasis on online licensing systems under section 5.

2. Expenditures:

There may be some cost associated with the additional rulemaking granted.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the number of individuals willing and able to become licensed funeral directors. It may also discourage individuals from becoming licensed direct disposers.

D. FISCAL COMMENTS:

⁸¹ F.A.C. 69K-23.004(7).

⁸² F.A.C. 69K-23.004(3).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the Insurance, Business & Financial Affairs Policy Committee adopted two amendments. The amendments made the following clarification to the bill:

- Clarified that a licensee who previously disclosed a criminal record upon initial application or renewal of a license is not required to disclose crimes for which he or she has been convicted, or entered a plea of guilty or no contest, unless those crimes have occurred since the date of the initial application or renewal of a license, depending upon which is the most recent.

1 A bill to be entitled
2 An act relating to the Florida Funeral, Cemetery, and
3 Consumer Services Act; amending s. 497.005, F.S.; defining
4 the terms "direct supervision" and "general supervision"
5 as they relate to supervision by funeral directors and
6 embalmers; amending s. 497.101, F.S.; revising
7 qualifications for the membership of the Board of Funeral,
8 Cemetery, and Consumer Services; amending s. 497.103,
9 F.S.; authorizing the waiver of certain provisions during
10 a state of emergency; amending s. 497.140, F.S.;
11 authorizing fees for certain inspections of licensees;
12 amending s. 497.141, F.S.; prohibiting the issuance or
13 renewal of a license to an applicant that has specified
14 criminal records under certain circumstances; authorizing
15 a licensing authority of the Department of Financial
16 Services to adopt rules; authorizing the licensing
17 authority to require the submission of applications in an
18 online electronic format; authorizing fees for
19 applications submitted in a paper format; amending s.
20 497.142, F.S.; requiring an applicant for renewal of a
21 license to disclose certain criminal offenses; requiring
22 an applicant for issuance or renewal of a license to
23 disclose certain criminal pleas; requiring the licensing
24 authority to adopt rules for the disclosure of criminal
25 records; authorizing an exception from disclosure
26 requirements for previously disclosed criminal records;
27 amending s. 497.143, F.S.; revising legislative intent;
28 authorizing the licensing authority to adopt rules for the

29 issuance of limited licenses to certain persons licensed
 30 outside the state; revising eligibility and application
 31 requirements for a limited license; amending s. 497.147,
 32 F.S.; deleting limits on the continuing education credit
 33 provided for attendance at board meetings; amending s.
 34 497.152, F.S.; providing that certain criminal pleas are a
 35 ground for denial of an application or discipline of a
 36 licensee under chapter 497, F.S.; amending s. 497.161,
 37 F.S.; authorizing the department to adopt rules that
 38 temporarily suspend or modify certain provisions during
 39 and following a state of emergency; amending s. 497.162,
 40 F.S.; revising which nonlicensed personnel are required to
 41 complete a course on communicable diseases; extending time
 42 for completion of the course; amending s. 497.166, F.S.;
 43 conforming terminology to changes made by the act;
 44 amending s. 497.277, F.S.; authorizing a cemetery company
 45 to charge a fee for performing specified duties related to
 46 certain cemetery sales contracts; requiring disclosure of
 47 the charges; exempting charges from certain trust deposit
 48 requirements; authorizing the department to adopt rules;
 49 amending s. 497.278, F.S.; authorizing a cemetery company
 50 to require certain persons and firms to show proof of
 51 certain insurance coverage; prohibiting a cemetery company
 52 from setting certain insurance coverage limits; amending
 53 s. 497.372, F.S.; revising the acts which are exempt from
 54 regulation as the practice of funeral directing; amending
 55 s. 497.373, F.S.; revising the educational and examination
 56 requirements for licensure of funeral directors by

57 examination; revising requirements for supervision of
 58 provisional licensees; amending s. 497.374, F.S.; revising
 59 the examination requirements for licensure of funeral
 60 directors by endorsement; amending s. 497.375, F.S.;
 61 establishing educational requirements for funeral director
 62 intern licenses; revising the application requirements for
 63 funeral director intern licensees; revising requirements
 64 for supervision of funeral director interns; providing for
 65 the expiration of funeral director intern licenses;
 66 prohibiting the renewal of funeral director intern
 67 licenses except under certain circumstances; authorizing
 68 rules for the renewal of funeral director intern licenses;
 69 providing for license renewal fees; amending s. 497.376,
 70 F.S.; deleting provisions requiring rules for the display
 71 of certain licenses; amending s. 497.378, F.S.; conforming
 72 the continuing education requirements for funeral
 73 directors and embalmers to the repeal by the act of
 74 provisions requiring a course on HIV and AIDS; authorizing
 75 the licensing authority to adopt rules for the renewal of
 76 funeral director and embalmer licenses; amending s.
 77 497.380, F.S.; providing duties of a funeral director in
 78 charge of a funeral establishment; requiring a funeral
 79 director in charge to have an embalmer license and
 80 providing exceptions; requiring the reporting of a change
 81 in the funeral director in charge of a funeral
 82 establishment; requiring certain licensees to display
 83 their licenses in funeral establishments; creating s.
 84 497.4555, F.S.; authorizing a preneed licensee to charge a

CS/HB 527

2010

85 fee for performing certain duties related to a preneed
 86 contract; requiring disclosure of the charges; exempting
 87 charges from certain trust deposit requirements;
 88 authorizing the department to adopt rules; amending s.
 89 497.456, F.S.; authorizing requirements that certain
 90 claims forms be sworn and notarized; amending s. 497.464,
 91 F.S.; deleting a requirement that trust payments for
 92 preneed contracts be deposited in this state; requiring
 93 that funds discharging a preneed contract be disbursed
 94 from the trust under certain circumstances; amending s.
 95 497.602, F.S.; revising the course requirements for a
 96 direct disposer license; deleting provisions requiring
 97 rules for the display of certain licenses; amending s.
 98 497.603, F.S.; requiring the licensing authority to adopt
 99 rules for the renewal of direct disposer licenses;
 100 requiring a course on communicable diseases; conforming
 101 the continuing education requirements for direct disposers
 102 to the repeal by the act of provisions requiring a course
 103 on HIV and AIDS; amending s. 497.604, F.S.; requiring a
 104 direct disposal establishment to have a licensed funeral
 105 director act as the direct disposer in charge and
 106 providing exceptions; requiring certain licensees to
 107 display their licenses in direct disposal establishments;
 108 repealing s. 497.367, F.S., relating to a continuing
 109 education course required for funeral directors and
 110 embalmers on HIV and AIDS; providing an effective date.

111

112 Be It Enacted by the Legislature of the State of Florida:

113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140

Section 1. Section 497.005, Florida Statutes, is amended to read:

497.005 Definitions.—As used in this chapter, the term:

(1) "Alternative container" means an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, that is designed for the encasement of human remains and that is made of fiberboard, pressed wood, composition materials (with or without an outside covering), or like materials.

(2) "At-need solicitation" means any uninvited contact by a licensee or her or his agent for the purpose of the sale of burial services or merchandise to the family or next of kin of a person after her or his death has occurred.

(3) "Bank of belowground crypts" means any construction unit of belowground crypts that is acceptable to the department and that a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.

(4) "Belowground crypts" consist of interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and known also as "lawn crypts," "westminsters," or "turf-top crypts."

(5) "Board" means the Board of Funeral, Cemetery, and Consumer Services.

(6) "Burial merchandise," "funeral merchandise," or "merchandise" means any personal property offered or sold by any person for use in connection with the final disposition, memorialization, interment, entombment, or inurnment of human

CS/HB 527

2010

141 remains or cremated remains, including, but not limited to,
 142 caskets, outer burial containers, alternative containers,
 143 cremation containers, cremation interment containers, urns,
 144 monuments, private mausoleums, flowers, benches, vases,
 145 acknowledgment cards, register books, memory folders, prayer
 146 cards, and clothing.

147 (7) "Burial right" means the right to use a grave space,
 148 mausoleum, columbarium, ossuary, or scattering garden for the
 149 interment, entombment, inurnment, or other disposition of human
 150 remains or cremated remains.

151 (8) "Burial service" or "service" means any service
 152 offered or provided in connection with the final disposition,
 153 memorialization, interment, entombment, or inurnment of human
 154 remains or cremated remains.

155 (9) "Care and maintenance" means the perpetual process of
 156 keeping a cemetery and its lots, graves, grounds, landscaping,
 157 roads, paths, parking lots, fences, mausoleums, columbaria,
 158 vaults, crypts, utilities, and other improvements, structures,
 159 and embellishments in a well-cared-for and dignified condition,
 160 so that the cemetery does not become a nuisance or place of
 161 reproach and desolation in the community. As specified in the
 162 rules of the licensing authority, "care and maintenance" may
 163 include, but is not limited to, any or all of the following
 164 activities: mowing the grass at reasonable intervals; raking and
 165 cleaning the grave spaces and adjacent areas; pruning of shrubs
 166 and trees; suppression of weeds and exotic flora; and
 167 maintenance, upkeep, and repair of drains, water lines, roads,
 168 buildings, and other improvements. "Care and maintenance" may

CS/HB 527

2010

169 include, but is not limited to, reasonable overhead expenses
 170 necessary for such purposes, including maintenance of machinery,
 171 tools, and equipment used for such purposes. "Care and
 172 maintenance" may also include repair or restoration of
 173 improvements necessary or desirable as a result of wear,
 174 deterioration, accident, damage, or destruction. "Care and
 175 maintenance" does not include expenses for the construction and
 176 development of new grave spaces or interment structures to be
 177 sold to the public.

178 (10) "Casket" means a rigid container that is designed for
 179 the encasement of human remains and that is usually constructed
 180 of wood or metal, ornamented, and lined with fabric.

181 (11) "Cemetery" means a place dedicated to and used or
 182 intended to be used for the permanent interment of human remains
 183 or cremated remains. A cemetery may contain land or earth
 184 interment; mausoleum, vault, or crypt interment; a columbarium,
 185 ossuary, scattering garden, or other structure or place used or
 186 intended to be used for the interment or disposition of cremated
 187 remains; or any combination of one or more of such structures or
 188 places.

189 (12) "Cemetery company" means any legal entity that owns
 190 or controls cemetery lands or property.

191 (13) "Centralized embalming facility" means a facility in
 192 which embalming takes place that operates independently of a
 193 funeral establishment licensee and that offers embalming
 194 services to funeral directors for a fee.

195 (14) "Cinerator" means a facility where dead human bodies
 196 are subjected to cremation.

197 (15) "Closed container" means any container in which
 198 cremated remains can be placed and closed in a manner so as to
 199 prevent leakage or spillage of the remains.

200 (16) "Columbarium" means a structure or building that is
 201 substantially exposed above the ground and that is intended to
 202 be used for the inurnment of cremated remains.

203 (17) "Common business enterprise" means a group of two or
 204 more business entities that share common ownership in excess of
 205 50 percent.

206 (18) "Control" means the possession, directly or
 207 indirectly, through the ownership of voting shares, by contract,
 208 arrangement, understanding, relationship, or otherwise, of the
 209 power to direct or cause the direction of the management and
 210 policies of a person or entity. However, a person or entity
 211 shall not be deemed to have control if the person or entity
 212 holds voting shares, in good faith and not for the purpose of
 213 circumventing this definition, as an agent, bank, broker,
 214 nominee, custodian, or trustee for one or more beneficial owners
 215 who do not individually or as a group have control.

216 (19) "Cremated remains" means all the remains of the human
 217 body recovered after the completion of the cremation process,
 218 including processing or pulverization that leaves only bone
 219 fragments reduced to unidentifiable dimensions and may include
 220 the residue of any foreign matter, including casket material,
 221 bridgework, or eyeglasses that were cremated with the human
 222 remains.

223 (20) "Cremation" means any mechanical or thermal process
 224 whereby a dead human body is reduced to ashes and bone

CS/HB 527

2010

225 fragments. Cremation also includes any other mechanical or
 226 thermal process whereby human remains are pulverized, burned,
 227 cremated, or otherwise further reduced in size or quantity.

228 (21) "Cremation chamber" means the enclosed space within
 229 which the cremation process takes place. Cremation chambers
 230 covered by these procedures shall be used exclusively for the
 231 cremation of human remains.

232 (22) "Cremation container" means the casket or alternative
 233 container in which the human remains are transported to and
 234 placed in the cremation chamber for a cremation. A cremation
 235 container should meet substantially all of the following
 236 standards:

237 (a) Be composed of readily combustible or consumable
 238 materials suitable for cremation.

239 (b) Be able to be closed in order to provide a complete
 240 covering for the human remains.

241 (c) Be resistant to leakage or spillage.

242 (d) Be rigid enough to be handled with ease.

243 (e) Be able to provide protection for the health, safety,
 244 and personal integrity of crematory personnel.

245 (23) "Cremation interment container" means a rigid outer
 246 container that, subject to a cemetery's rules and regulations,
 247 is composed of concrete, steel, fiberglass, or some similar
 248 material in which an urn is placed prior to being interred in
 249 the ground and that is designed to support the earth above the
 250 urn.

251 (24) "Department" means the Department of Financial
 252 Services.

253 (25) "Direct disposal establishment" means a facility
 254 licensed under this chapter where a direct disposer practices
 255 direct disposition.

256 (26) "Direct disposer" means any person licensed under
 257 this chapter to practice direct disposition in this state.

258 (27) "Direct supervision" means supervision by a licensed:

259 (a) Funeral director who provides initial direction and
 260 periodic inspection of the arrangements and who is physically
 261 present or on the premises of the funeral establishment at all
 262 times when the tasks, functions, and duties relating to funeral
 263 directing are performed; or

264 (b) Embalmer who provides initial direction and
 265 instruction regarding the preservation of a dead human body in
 266 its entirety or in part and who is physically present or on the
 267 premises of the funeral establishment or embalming facility at
 268 all times when the tasks, functions, and duties relating to
 269 embalming are performed.

270 ~~(28)~~-(27) "Director" means the director of the Division of
 271 Funeral, Cemetery, and Consumer Services.

272 ~~(29)~~-(28) "Disinterment" means removal of a dead human body
 273 from earth interment or aboveground interment.

274 ~~(30)~~-(29) "Division" means the Division of Funeral,
 275 Cemetery, and Consumer Services within the Department of
 276 Financial Services.

277 ~~(31)~~-(30) "Embalmer" means any person licensed under this
 278 chapter to practice embalming in this state.

279 ~~(32)~~-(31) "Final disposition" means the final disposal of a
 280 dead human body by earth interment, aboveground interment,

CS/HB 527

2010

281 cremation, burial at sea, or delivery to a medical institution
 282 for lawful dissection if the medical institution assumes
 283 responsibility for disposal. "Final disposition" does not
 284 include the disposal or distribution of cremated remains and
 285 residue of cremated remains.

286 (33)~~(32)~~ "Funeral" or "funeral service" means the
 287 observances, services, or ceremonies held to commemorate the
 288 life of a specific deceased human being and at which the human
 289 remains are present.

290 (34)~~(33)~~ "Funeral director" means any person licensed
 291 under this chapter to practice funeral directing in this state.

292 (35)~~(34)~~ "Funeral establishment" means a facility licensed
 293 under this chapter where a funeral director or embalmer
 294 practices funeral directing or embalming.

295 (36) "General supervision" means supervision by a
 296 licensed:

297 (a) Funeral director who is reasonably available and in a
 298 position to provide direction and guidance by being physically
 299 present, being on the premises of the funeral establishment, or
 300 being in proximity to the funeral establishment and available
 301 telephonically or by electronic communication at all times when
 302 the tasks, functions, and duties relating to funeral directing
 303 are performed; or

304 (b) Embalmer who is reasonably available and in a position
 305 to provide direction and guidance by being physically present,
 306 being on the premises of the funeral establishment or embalming
 307 facility, or being in proximity to the funeral establishment or
 308 embalming facility and available telephonically or by electronic

CS/HB 527

2010

309 communication at all times when the tasks, functions, and duties
 310 relating to embalming are performed.

311 (37)~~(35)~~ "Grave space" means a space of ground in a
 312 cemetery intended to be used for the interment in the ground of
 313 human remains.

314 (38)~~(36)~~ "Human remains" or "remains," or "dead human
 315 body" or "dead human bodies," means the body of a deceased human
 316 person for which a death certificate or fetal death certificate
 317 is required under chapter 382 and includes the body in any stage
 318 of decomposition.

319 (39)~~(37)~~ "Legally authorized person" means, in the
 320 priority listed, the decedent, when written inter vivos
 321 authorizations and directions are provided by the decedent; the
 322 surviving spouse, unless the spouse has been arrested for
 323 committing against the deceased an act of domestic violence as
 324 defined in s. 741.28 that resulted in or contributed to the
 325 death of the deceased; a son or daughter who is 18 years of age
 326 or older; a parent; a brother or sister who is 18 years of age
 327 or older; a grandchild who is 18 years of age or older; a
 328 grandparent; or any person in the next degree of kinship. In
 329 addition, the term may include, if no family member exists or is
 330 available, the guardian of the dead person at the time of death;
 331 the personal representative of the deceased; the attorney in
 332 fact of the dead person at the time of death; the health
 333 surrogate of the dead person at the time of death; a public
 334 health officer; the medical examiner, county commission, or
 335 administrator acting under part II of chapter 406 or other
 336 public administrator; a representative of a nursing home or

CS/HB 527

2010

337 other health care institution in charge of final disposition; or
 338 a friend or other person not listed in this subsection who is
 339 willing to assume the responsibility as the legally authorized
 340 person. Where there is a person in any priority class listed in
 341 this subsection, the funeral establishment shall rely upon the
 342 authorization of any one legally authorized person of that class
 343 if that person represents that she or he is not aware of any
 344 objection to the cremation of the deceased's human remains by
 345 others in the same class of the person making the representation
 346 or of any person in a higher priority class.

347 (40)~~(38)~~ "License" includes all authorizations required or
 348 issued under this chapter, except where expressly indicated
 349 otherwise, and shall be understood to include authorizations
 350 previously referred to as registrations or certificates of
 351 authority in chapters 470 and 497 as those chapters appeared in
 352 the 2004 edition of the Florida Statutes.

353 (41)~~(39)~~ "Licensee" means the person or entity holding any
 354 license or other authorization issued under this chapter, except
 355 where expressly indicated otherwise.

356 (42)~~(40)~~ "Mausoleum" means a structure or building that is
 357 substantially exposed above the ground and that is intended to
 358 be used for the entombment of human remains.

359 (43)~~(41)~~ "Mausoleum section" means any construction unit
 360 of a mausoleum that is acceptable to the department and that a
 361 cemetery uses to initiate its mausoleum program or to add to its
 362 existing mausoleum structures.

363 (44)~~(42)~~ "Monument" means any product used for identifying
 364 a grave site and cemetery memorials of all types, including

CS/HB 527

2010

365 monuments, markers, and vases.

366 (45)~~(43)~~ "Monument establishment" means a facility that
367 operates independently of a cemetery or funeral establishment
368 and that offers to sell monuments or monument services to the
369 public for placement in a cemetery.

370 (46)~~(44)~~ "Net assets" means the amount by which the total
371 assets of a licensee, excluding goodwill, franchises, customer
372 lists, patents, trademarks, and receivables from or advances to
373 officers, directors, employees, salespersons, and affiliated
374 companies, exceed total liabilities of the licensee. For
375 purposes of this definition, the term "total liabilities" does
376 not include the capital stock, paid-in capital, or retained
377 earnings of the licensee.

378 (47)~~(45)~~ "Net worth" means total assets minus total
379 liabilities pursuant to generally accepted accounting
380 principles.

381 (48)~~(46)~~ "Niche" means a compartment or cubicle for the
382 memorialization or permanent placement of a container or urn
383 containing cremated remains.

384 (49)~~(47)~~ "Ossuary" means a receptacle used for the
385 communal placement of cremated remains without benefit of an urn
386 or any other container in which cremated remains may be
387 commingled with other cremated remains and are nonrecoverable.
388 It may or may not include memorialization.

389 (50)~~(48)~~ "Outer burial container" means an enclosure into
390 which a casket is placed and includes, but is not limited to,
391 vaults made of concrete, steel, fiberglass, or copper; sectional
392 concrete enclosures; crypts; and wooden enclosures.

CS/HB 527

2010

393 (51)~~(49)~~ "Person," when used without qualification such as
 394 "natural" or "individual," includes both natural persons and
 395 legal entities.

396 (52)~~(50)~~ "Personal residence" means any residential
 397 building in which one temporarily or permanently maintains her
 398 or his abode, including, but not limited to, an apartment or a
 399 hotel, motel, nursing home, convalescent home, home for the
 400 aged, or a public or private institution.

401 (53)~~(51)~~ "Practice of direct disposition" means the
 402 cremation of human remains without preparation of the human
 403 remains by embalming and without any attendant services or rites
 404 such as funeral or graveside services or the making of
 405 arrangements for such final disposition.

406 (54)~~(52)~~ "Practice of embalming" means disinfecting or
 407 preserving or attempting to disinfect or preserve dead human
 408 bodies by replacing certain body fluids with preserving and
 409 disinfecting chemicals.

410 (55)~~(53)~~ "Practice of funeral directing" means the
 411 performance by a licensed funeral director of any of those
 412 functions authorized by s. 497.372.

413 (56)~~(54)~~ "Preneed contract" means any arrangement or
 414 method, of which the provider of funeral merchandise or services
 415 has actual knowledge, whereby any person agrees to furnish
 416 funeral merchandise or service in the future.

417 (57)~~(55)~~ "Preneed sales agent" means any person who is
 418 licensed under this chapter to sell preneed burial or funeral
 419 service and merchandise contracts or direct disposition
 420 contracts in this state.

CS/HB 527

2010

421 (58)~~(56)~~ "Principal" means and includes the sole
 422 proprietor of a sole proprietorship; all partners of a
 423 partnership; all members of a limited liability company;
 424 regarding a corporation, all directors and officers, and all
 425 stockholders controlling more than 10 percent of the voting
 426 stock; and all other persons who can exercise control over the
 427 person or entity.

428 (59)~~(57)~~ "Processing" means the reduction of identifiable
 429 bone fragments after the completion of the cremation process to
 430 unidentifiable bone fragments by manual means.

431 (60)~~(58)~~ "Profession" and "occupation" are used
 432 interchangeably in this chapter. The use of the word
 433 "profession" in this chapter with respect to any activities
 434 regulated under this chapter shall not be deemed to mean that
 435 such activities are not occupations for other purposes in state
 436 or federal law.

437 (61)~~(59)~~ "Pulverization" means the reduction of
 438 identifiable bone fragments after the completion of the
 439 cremation and processing to granulated particles by manual or
 440 mechanical means.

441 (62)~~(60)~~ "Refrigeration facility" means a facility that is
 442 operated independently of a funeral establishment, crematory, or
 443 direct disposal establishment, that maintains space and
 444 equipment for the storage and refrigeration of dead human
 445 bodies, and that offers its service to funeral directors,
 446 funeral establishments, direct disposers, direct disposal
 447 establishments, or crematories for a fee.

448 (63)~~(61)~~ "Religious institution" means an organization

CS/HB 527

2010

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

453 (64)~~(62)~~ "Removal service" means any service that operates
 454 independently of a funeral establishment or a direct disposal
 455 establishment, that handles the initial removal of dead human
 456 bodies, and that offers its service to funeral establishments
 457 and direct disposal establishments for a fee.

458 (65)~~(63)~~ "Rules" refers to rules adopted under this
 459 chapter unless expressly indicated to the contrary.

460 (66)~~(64)~~ "Scattering garden" means a location set aside,
 461 within a cemetery, that is used for the spreading or
 462 broadcasting of cremated remains that have been removed from
 463 their container and can be mixed with or placed on top of the
 464 soil or ground cover or buried in an underground receptacle on a
 465 commingled basis and that are nonrecoverable. It may or may not
 466 include memorialization.

467 (67)~~(65)~~ "Servicing agent" means any person acting as an
 468 independent contractor whose fiduciary responsibility is to
 469 assist both the trustee and licensee in administrating their
 470 responsibilities pursuant to this chapter.

471 (68)~~(66)~~ "Solicitation" means any communication that
 472 directly or implicitly requests an immediate oral response from
 473 the recipient.

474 (69)~~(67)~~ "Statutory accounting" means generally accepted
 475 accounting principles, except as modified by this chapter.

476 (70)~~(68)~~ "Temporary container" means a receptacle for

CS/HB 527

2010

477 cremated remains usually made of cardboard, plastic, or similar
 478 material designated to hold the cremated remains until an urn or
 479 other permanent container is acquired.

480 (71)~~(69)~~ "Urn" means a receptacle designed to permanently
 481 encase cremated remains.

482 Section 2. Subsection (2) of section 497.101, Florida
 483 Statutes, is amended to read:

484 497.101 Board of Funeral, Cemetery, and Consumer Services;
 485 membership; appointment; terms.—

486 (2) Two members of the board shall be funeral directors
 487 licensed under part III of this chapter who are associated with
 488 a funeral establishment. One member of the board shall be a
 489 funeral director licensed under part III of this chapter who is
 490 associated with a funeral establishment licensed under part III
 491 of this chapter that has a valid preneed license issued pursuant
 492 to this chapter and who owns or operates a cinerator facility
 493 approved under chapter 403 and licensed under part VI of this
 494 chapter. Two members of the board shall be persons whose primary
 495 occupation is associated with a cemetery company licensed
 496 pursuant to this chapter. Three members of the board shall be
 497 consumers who are residents of the state, have never been
 498 licensed as funeral directors or embalmers, are not connected
 499 with a cemetery or cemetery company licensed pursuant to this
 500 chapter, and are not connected with the death care industry or
 501 the practice of embalming, funeral directing, or direct
 502 disposition. One of the consumer members shall be at least 60
 503 years of age, and one shall be licensed as a certified public
 504 accountant under chapter 473. One member of the board shall be a

CS/HB 527

2010

505 principal of a monument establishment licensed under this
 506 chapter as a monument builder ~~or, for board appointments made~~
 507 ~~before June 1, 2006, a licensed monument establishment certified~~
 508 ~~by the department to be eligible for licensure as a monument~~
 509 ~~builder~~. One member shall be the State Health Officer or her or
 510 his designee. There shall not be two or more board members who
 511 are principals or employees of the same company or partnership
 512 or group of companies or partnerships under common control.

513 Section 3. Subsection (8) is added to section 497.103,
 514 Florida Statutes, to read:

515 497.103 Authority of board and department; Chief Financial
 516 Officer recommendations.—

517 (8) STATE-OF-EMERGENCY WAIVER.—The licensing authority may
 518 temporarily waive any provision of this chapter during a state
 519 of emergency declared pursuant to s. 252.36 in any threatened
 520 area or areas specified in the Governor's executive order or
 521 proclamation.

522 Section 4. Subsection (9) is added to section 497.140,
 523 Florida Statutes, to read:

524 497.140 Fees.—

525 (9) The licensing authority may impose a fee upon a
 526 licensee for conducting an inspection of the licensee's
 527 facilities if required under this chapter following a change in
 528 ownership or control or a change in location. The fee may not
 529 exceed the amount of the licensee's annual inspection fee.

530 Section 5. Subsection (5) of section 497.141, Florida
 531 Statutes, is amended, and subsection (13) is added to that
 532 section, to read:

CS/HB 527

2010

533 497.141 Licensing; general application procedures.-
 534 (5) (a) The licensing authority may not issue, and
 535 effective July 1, 2011, may not renew, a license under this
 536 chapter to an applicant that has a criminal record required to
 537 be disclosed under s. 497.142(10) unless the applicant
 538 demonstrates that issuance of the license, according to rules
 539 adopted by the licensing authority, does not create a danger to
 540 the public. A licensee who previously disclosed her or his
 541 criminal record upon initial application or renewal of her or
 542 his license must only disclose a criminal offense for which the
 543 licensee was convicted or entered a plea of guilty or nolo
 544 contendere since the most recent renewal of her or his license
 545 or, if the license has not been renewed, since the licensee's
 546 initial application.

547 (b) The board may refuse to rule on an initial application
 548 for licensure by any applicant who is under investigation or
 549 prosecution in any jurisdiction for an action which there is
 550 reasonable cause to believe would constitute a violation of this
 551 chapter if committed in this state, until such time as such
 552 investigation or prosecution is completed and the results of the
 553 investigation or prosecution are reviewed by the board.

554 (13) (a) The licensing authority may adopt rules that
 555 require applicants for any category of licensure under this
 556 chapter to apply for the issuance or renewal of their licenses
 557 in an online electronic format.

558 (b) The online electronic format for renewal of a license
 559 must not allow submission of an improperly prepared renewal
 560 application. Upon an applicant's submission of her or his

CS/HB 527

2010

561 renewal application, the online electronic format must allow the
 562 applicant to print a receipt of the properly prepared renewal
 563 application.

564 (c) The rules may allow an applicant to submit a paper
 565 form in lieu of the online electronic format and may impose an
 566 additional fee not to exceed \$25 per form for submitting the
 567 paper form.

568 Section 6. Paragraphs (a), (b), and (g) of subsection (10)
 569 of section 497.142, Florida Statutes, are amended to read:

570 497.142 Licensing; fingerprinting and criminal background
 571 checks.—

572 (10) (a) When applying for any license under this chapter,
 573 every applicant must ~~shall be required to~~ disclose the
 574 applicant's criminal records in accordance with this subsection.
 575 When applying for renewal of any license under this chapter,
 576 every licensee must disclose only those criminal offenses
 577 required to be disclosed under this subsection since the most
 578 recent renewal of her or his license or, if the license has not
 579 been renewed, since the licensee's initial application.

580 (b) The criminal record required to be disclosed shall be
 581 any crime listed in paragraph (c) for ~~of~~ which the person or
 582 entity required to make disclosure has been convicted or to
 583 which that person or entity entered a plea ~~in the nature of~~
 584 guilty or nolo contendere no contest. Disclosure is ~~shall be~~
 585 ~~required pursuant to this subsection regardless of whether~~
 586 ~~adjudication~~ is ~~was~~ entered or withheld by the court ~~in which~~
 587 ~~the case was prosecuted.~~

CS/HB 527

2010

588 (g) The licensing authority shall ~~may~~ adopt rules
 589 specifying forms and procedures to be used ~~utilized~~ by persons
 590 required to disclose criminal records under this subsection. The
 591 rules may require a licensee to disclose only those criminal
 592 records that have not previously been disclosed under this
 593 subsection at the renewal of her or his license or, if the
 594 license has not been renewed, at the initial issuance of the
 595 license. The licensing authority may conduct investigation and
 596 further inquiry of any person regarding any criminal record
 597 disclosed pursuant to this section.

598 Section 7. Subsections (1), (2), and (3) of section
 599 497.143, Florida Statutes, are amended to read:

600 497.143 Licensing; limited licenses for times of critical
 601 need ~~retired professionals.~~

602 (1) It is the intent of the Legislature that, absent a
 603 threat to the health, safety, and welfare of the public, ~~the use~~
 604 ~~of retired Florida licensees professionals~~ in good standing and
 605 active licensees in good standing from other jurisdictions, be
 606 able to serve this state during times of critical need ~~should be~~
 607 ~~encouraged. To that end, rules may be adopted to permit practice~~
 608 ~~by retired professionals as limited licensees under this~~
 609 ~~section.~~

610 (2) As used in ~~For purposes of~~ this section, the term
 611 "critical need" means an executive order of ~~from~~ the Governor or
 612 ~~a~~ federal order declaring that a state of emergency exists in an
 613 area.

614 (3) The licensing authority may adopt rules for the
 615 issuance of limited licenses in accordance with this section. A

CS/HB 527

2010

616 Any person seeking ~~desiring to obtain~~ a limited license, when
 617 permitted by rule, shall submit to the department an application
 618 ~~and fee, not to exceed \$300,~~ and an affidavit stating that the
 619 applicant is a retired Florida licensee or holds an active
 620 license ~~has been licensed~~ to practice in another ~~any~~
 621 jurisdiction of ~~in~~ the United States ~~for at least 10 years~~ in
 622 the profession for which the applicant seeks the ~~a~~ limited
 623 license. The affidavit shall also state that the applicant ~~has~~
 624 ~~retired from the practice of that profession and intends to~~
 625 practice only pursuant to the restrictions of the limited
 626 license granted under ~~pursuant to~~ this section. ~~If the applicant~~
 627 ~~for a limited license submits a notarized statement from the~~
 628 ~~employer stating that the applicant will not receive monetary~~
 629 ~~compensation for any service involving the practice of her or~~
 630 ~~his profession, all licensure fees shall be waived. In no event~~
 631 ~~may~~ A person holding a limited license under this section may
 632 not engage in preneed sales under the ~~such~~ limited license.

633 Section 8. Subsection (5) of section 497.147, Florida
 634 Statutes, is amended to read:

635 497.147 Continuing education; general provisions.—

636 (5) The board may by rule provide ~~up to 5 hours of~~
 637 continuing education credit for each ~~per~~ continuing education
 638 reporting period for licensees attending board meetings or
 639 selected types or portions of board meetings, as specified by
 640 such rules. ~~The rules may limit the number of times such credit~~
 641 ~~may be utilized by a licensee.~~ The rules may include provisions
 642 that establish ~~as to~~ the minimum amount of time that must be
 643 spent in the board meeting room viewing proceedings, ~~which may~~

CS/HB 527

2010

644 ~~be more than 5 hours of attendance,~~ requirements for advance
645 notice by licensees to department staff of proposed attendance,
646 requirements to sign in and out of the meeting room on lists
647 maintained at the meeting site by department staff, forms that
648 must be completed by the licensee to obtain such credit, and
649 such other requirements deemed by the board to be advisable or
650 necessary to prevent abuse of such rules and to ensure that
651 useful information is obtained by licensees as a result of
652 attendance. Procedural requirements of such rules requiring
653 action by the department are ~~shall be~~ subject to approval by the
654 department before ~~prior to~~ promulgation.

655 Section 9. Subsection (2) of section 497.152, Florida
656 Statutes, is amended to read:

657 497.152 Disciplinary grounds.—This section sets forth
658 conduct that is prohibited and that shall constitute grounds for
659 denial of any application, imposition of discipline, or other
660 enforcement action against the licensee or other person
661 committing such conduct. For purposes of this section, the
662 requirements of this chapter include the requirements of rules
663 adopted under authority of this chapter. No subsection heading
664 in this section shall be interpreted as limiting the
665 applicability of any paragraph within the subsection.

666 (2) CRIMINAL ACTIVITY.—Being convicted or found guilty of,
667 or entering a plea of guilty or nolo contendere to, regardless
668 of adjudication, a crime in any jurisdiction that relates to the
669 practice of, or the ability to practice, a licensee's profession
670 or occupation under this chapter.

CS/HB 527

2010

671 Section 10. Subsection (4) is added to section 497.161,
 672 Florida Statutes, to read:

673 497.161 Other rulemaking provisions.—

674 (4) The department may, subject to approval by the board,
 675 adopt rules that temporarily suspend or modify any provision of
 676 this chapter during a state of emergency declared pursuant to s.
 677 252.36. The rules may only allow the suspension or modification
 678 of a provision which is necessary or advisable to allow
 679 licensees under this chapter to provide essential services to
 680 the public under the emergency conditions. The rules may be
 681 adopted before any emergency exists but may not take effect
 682 until the Governor issues an executive order or proclamation
 683 declaring a state of emergency. The rules may remain in effect
 684 after a state of emergency is terminated but only for the
 685 limited period necessary to allow transition back to normal
 686 operations under the nonemergency requirements of this chapter.
 687 However, a rule suspending or modifying any provision of this
 688 chapter may not remain in effect for more than 12 months after
 689 the state of emergency is terminated.

690 Section 11. Section 497.162, Florida Statutes, is amended
 691 to read:

692 497.162 Health and safety education.—All individuals not
 693 licensed under this chapter who intend to be employed as
 694 operational personnel affiliated with a direct disposal
 695 establishment, cinerator facility, removal service,
 696 refrigeration facility, or centralized embalming facility who
 697 have direct contact with, ~~as well as all nonlicensed individuals~~
 698 ~~who intend to be involved in the removal or transportation of~~

CS/HB 527

2010

699 human remains on behalf of a funeral establishment, direct
 700 disposal establishment, or cinerator facility shall complete one
 701 course approved by the licensing authority on communicable
 702 diseases, within 30 ~~10~~ days after the date that they begin
 703 functioning as operational personnel on behalf of any entity
 704 that is regulated by this chapter. The course shall not exceed 3
 705 hours and shall be offered at approved locations throughout the
 706 state. Such locations may include establishments that are
 707 licensed under this chapter. The licensing authority shall adopt
 708 rules to implement and enforce this provision, which rules shall
 709 include provisions that provide for the use of approved
 710 videocassette courses and other types of audio, video, Internet,
 711 or home study courses to fulfill the continuing education
 712 requirements of this section.

713 Section 12. Paragraphs (a) and (b) of subsection (3) of
 714 section 497.166, Florida Statutes, are amended to read:

715 497.166 Preneed sales.—

716 (3) (a) The funeral director in charge of a funeral
 717 establishment is ~~shall be~~ responsible for the control and
 718 activities of the establishment's preneed sales agents.

719 (b) The direct disposer in charge or a funeral director
 720 acting as the ~~a~~ direct disposer in charge of a direct disposal
 721 establishment is ~~shall be~~ responsible for the control and
 722 activities of the establishment's preneed sales agents.

723 Section 13. Subsection (6) is added to section 497.277,
 724 Florida Statutes, to read:

725 497.277 Other charges.—Other than the fees for the sale of
 726 burial rights, burial merchandise, and burial services, no other

CS/HB 527

2010

727 fee may be directly or indirectly charged, contracted for, or
 728 received by a cemetery company as a condition for a customer to
 729 use any burial right, burial merchandise, or burial service,
 730 except for:

731 (6) Charges paid for processing, filing, and archiving a
 732 cemetery sales contract and for performing other administrative
 733 duties related to the contract. However, these charges may not
 734 be imposed on a cemetery sales contract for the opening and
 735 closing of a grave or other burial right or for the installation
 736 of a vault in a grave for which burial rights were previously
 737 purchased. A cemetery company must disclose these charges to the
 738 customer and include them on its standard printed price lists
 739 and other disclosure information provided to the public under s.
 740 497.282. These charges are not subject to the trust deposit
 741 requirements in s. 497.458. The department may, subject to
 742 approval by the board, adopt rules to administer this
 743 subsection.

744 Section 14. Subsection (3) of section 497.278, Florida
 745 Statutes, is amended to read:

746 497.278 Monuments; installation fees.—

747 (3) A cemetery company may ~~not~~ require any person or firm
 748 that delivers, installs, places, or sets a monument to show
 749 proof of liability ~~obtain any form of insurance coverage and, if~~
 750 required by law, workers' compensation insurance coverage.
 751 However, a cemetery company may not set liability insurance
 752 coverage limits or require any person or firm to obtain any form
 753 of bond, or surety, or make any form of pledge, deposit, or
 754 monetary guarantee, as a condition for entry on or access to

CS/HB 527

2010

755 cemetery property.

756 Section 15. Paragraph (a) of subsection (2) of section
757 497.372, Florida Statutes, is amended to read:

758 497.372 Funeral directing; conduct constituting funeral
759 directing.—

760 (2) The practice of funeral directing shall not be
761 construed to consist of the following functions:

762 (a) The phoning-in, ~~or~~ faxing, or electronic transmission
763 of obituary notices; ordering of flowers or merchandise;
764 delivery of death certificates to attending physicians; or
765 clerical preparation and processing of death certificates,
766 insurance forms, and any clerical tasks that record the
767 information compiled by the funeral director or that are
768 incidental to any of the functions specified above.

769 Section 16. Paragraph (d) of subsection (1) and
770 subsections (2) and (3) of section 497.373, Florida Statutes,
771 are amended to read:

772 497.373 Funeral directing; licensure as a funeral director
773 by examination; provisional license.—

774 (1) Any person desiring to be licensed as a funeral
775 director shall apply to the licensing authority to take the
776 licensure examination. The licensing authority shall examine
777 each applicant who has remitted an examination fee set by rule
778 of the licensing authority not to exceed \$200 plus the actual
779 per applicant cost to the licensing authority for portions of
780 the examination and who the licensing authority certifies has:

CS/HB 527

2010

781 (d)1. Received an associate in arts degree, associate in
 782 science degree, or an associate in applied science degree in
 783 mortuary science approved by the licensing authority; or

784 2. Holds an associate degree or higher from a college or
 785 university accredited by a regional accrediting agency
 786 ~~association of colleges and schools~~ recognized by the United
 787 States Department of Education and is a graduate of a at least
 788 ~~an approved 1-year~~ course of study in mortuary science or
 789 funeral service arts approved by the licensing authority from a
 790 college or university accredited by the American Board of
 791 Funeral Service Education.

792 (2) The licensing authority shall license the applicant as
 793 a funeral director if she or he:

794 (a) Passes an examination on ~~the subjects of~~ the theory
 795 and practice of funeral directing and funeral service arts,
 796 ~~public health and sanitation, and local, state, and federal laws~~
 797 ~~and rules relating to the disposition of dead human bodies;~~
 798 however, the licensing authority may approve ~~there may be~~
 799 ~~approved~~ by rule the use of a national examination, such as the
 800 funeral service arts examination prepared by the Conference of
 801 Funeral Service Examining Boards, in lieu of ~~part of~~ this
 802 examination requirement.

803 (b) Passes an examination approved by the department on
 804 the local, state, and federal laws and rules relating to the
 805 disposition of dead human bodies.

806 (c) ~~(b)~~ Completes a 1-year internship under a licensed
 807 funeral director.

CS/HB 527

2010

808 (3) Any applicant who has completed the required 1-year
 809 internship and has been approved for examination as a funeral
 810 director may qualify for a provisional license to work in a
 811 licensed funeral establishment, under the direct supervision of
 812 a licensed funeral director for ~~a limited period of~~ 6 months as
 813 provided by rule of the licensing authority. However, a
 814 provisional licensee may work under the general supervision of a
 815 licensed funeral director upon passage of the laws-and-rules
 816 examination required under paragraph (2) (b). The fee for
 817 provisional licensure shall be set by rule of the licensing
 818 authority but may not exceed \$200. The fee required in this
 819 subsection shall be nonrefundable and in addition to the fee
 820 required by subsection (1). This provisional license may be
 821 renewed no more than one time.

822 Section 17. Paragraph (b) of subsection (1) of section
 823 497.374, Florida Statutes, is amended to read:

824 497.374 Funeral directing; licensure as a funeral director
 825 by endorsement; licensure of a temporary funeral director.-

826 (1) The licensing authority shall issue a license by
 827 endorsement to practice funeral directing to an applicant who
 828 has remitted a fee set by rule of the licensing authority not to
 829 exceed \$200 and who:

830 (b)1. Holds a valid license to practice funeral directing
 831 in another state of the United States, provided that, when the
 832 applicant secured her or his original license, the requirements
 833 for licensure were substantially equivalent to or more stringent
 834 than those existing in this state; or

835 2. Meets the qualifications for licensure in s. 497.373

CS/HB 527

2010

836 and has successfully completed a state, regional, or national
 837 examination in mortuary science or funeral service arts, which,
 838 as determined by rule of the licensing authority, is
 839 substantially equivalent to or more stringent than the
 840 examination given by the licensing authority.

841 Section 18. Section 497.375, Florida Statutes, is amended
 842 to read:

843 497.375 Funeral directing; licensure of a funeral director
 844 intern.—

845 (1) (a) Any person desiring to become a funeral director
 846 intern must apply to the licensing authority ~~shall make~~
 847 ~~application~~ on forms prescribed ~~as required~~ by rule of the
 848 licensing authority, together with a nonrefundable fee set as
 849 ~~determined~~ by rule of the licensing authority ~~but~~ not to exceed
 850 \$200.

851 (b)1. Except as provided in subparagraph 2., an applicant
 852 must hold the educational credentials required for licensure of
 853 a funeral director under s. 497.373(1)(d).

854 2. An applicant who has not completed the educational
 855 credentials required for a funeral director license is eligible
 856 for licensure as a funeral director intern if the applicant:

857 a. Holds an associate degree or higher in any field from a
 858 college or university accredited by a regional accrediting
 859 agency recognized by the United States Department of Education.

860 b. Is currently enrolled in and attending a licensing
 861 authority-approved course of study in mortuary science or
 862 funeral service arts required for licensure of a funeral
 863 director under s. 497.373(1)(d)2.

864 c. Has taken and received a passing grade in a college
 865 credit course in mortuary law or funeral service law and has
 866 taken and received a passing grade in a college credit course in
 867 ethics.

868 (c) An ~~The~~ application must include ~~shall indicate~~ the
 869 name and address of the ~~licensed~~ funeral director licensed under
 870 s. 497.373 or s. 497.374(1) under whose supervision the intern
 871 will receive training and the name of the licensed funeral
 872 establishment where the ~~such~~ training will ~~is to~~ be conducted.

873 (d) A ~~The~~ funeral director intern may perform only the
 874 tasks, functions, and duties relating to funeral directing that
 875 are performed ~~shall intern~~ under the direct supervision of a
 876 licensed funeral director who has an active, valid license under
 877 s. 497.373 or s. 497.374(1). However, a funeral director intern
 878 may perform those tasks, functions, and duties under the general
 879 supervision of a licensed funeral director upon graduation from
 880 a licensing authority-approved course of study in mortuary
 881 science or funeral service arts required under s.
 882 497.373(1)(d)2. and passage of the laws-and-rules examination
 883 required under s. 497.373(2)(b), if the funeral director in
 884 charge of the funeral director internship training agency, after
 885 6 months of direct supervision, certifies to the licensing
 886 agency that the intern is competent to complete the internship
 887 under general supervision.

888 (2) Rules shall be adopted establishing a funeral director
 889 internship program and criteria for funeral director intern
 890 training agencies and supervisors. Any funeral establishment
 891 where funeral directing is conducted may apply to the licensing

CS/HB 527

2010

892 authority for approval as a funeral director intern training
893 agency.

894 (3) A funeral establishment designated as a funeral
895 director intern training agency may not exact a fee from any
896 person obtaining intern training at such funeral establishment.

897 (4)(a) A funeral director intern license expires 1 year
898 after issuance and, except as provided in paragraph (b) or
899 paragraph (c), may not be renewed.

900 (b) A funeral director intern who is eligible for
901 licensure under subparagraph (1)(b)2. may renew her or his
902 funeral director intern license for an additional 1-year period
903 if the funeral director in charge of the funeral director intern
904 training agency certifies to the licensing authority that the
905 intern has completed at least one-half of the course of study in
906 mortuary science or funeral service arts.

907 (c) The licensing authority may adopt rules that allow a
908 funeral director intern to renew her or his funeral director
909 intern license for an additional 1-year period if the funeral
910 director intern demonstrates her or his failure to complete the
911 internship before expiration of the license due to illness,
912 personal injury, or other substantial hardship beyond her or his
913 reasonable control or demonstrates that she or he has completed
914 the requirements for licensure as a funeral director but is
915 awaiting the results of a licensure examination. However, a
916 funeral director intern who renews her or his license under
917 paragraph (b) is not eligible to renew the license under this
918 paragraph.

CS/HB 527

2010

919 (d) The licensing authority may require payment of a
 920 nonrefundable fee for the renewal of any funeral director intern
 921 license. The fee shall be set by rule of the licensing authority
 922 but may not exceed the fee set pursuant to paragraph (1)(a) for
 923 an initial funeral director intern license.

924 Section 19. Section 497.376, Florida Statutes, is amended
 925 to read:

926 497.376 License as funeral director and embalmer
 927 permitted; ~~display of license.~~

928 ~~(1) Nothing in This chapter does not may be construed to~~
 929 prohibit a person from holding a license as an embalmer and a
 930 license as a funeral director at the same time. There may be
 931 issued and renewed by the licensing authority a combination
 932 license as both funeral director and embalmer to persons meeting
 933 the separate requirements for both licenses as set forth in this
 934 chapter. The licensing authority may adopt rules providing
 935 procedures for applying for and renewing such combination
 936 license. The licensing authority may by rule establish
 937 application, renewal, and other fees for such combination
 938 license, which fees shall not exceed the sum of the maximum fees
 939 for the separate funeral director and embalmer license
 940 categories as provided in this chapter. Persons holding a
 941 combination license as a funeral director and an embalmer shall
 942 be subject to regulation under this chapter both as a funeral
 943 director and an embalmer.

944 ~~(2) There shall be adopted rules which require each~~
 945 ~~license issued under this chapter to be displayed in such a~~
 946 ~~manner as to make it visible to the public and to facilitate~~

CS/HB 527

2010

947 ~~inspection by the licensing authority. However, each licensee~~
 948 ~~shall permanently affix a recent photograph of the licensee to~~
 949 ~~each displayed license issued to that licensee as a funeral~~
 950 ~~director or embalmer.~~

951 Section 20. Subsection (1) of section 497.378, Florida
 952 Statutes, is amended to read:

953 497.378 Renewal of funeral director and embalmer
 954 licenses.—

955 (1) The licensing authority ~~There~~ shall renew ~~be renewed~~ a
 956 funeral director or embalmer license upon receipt of the renewal
 957 application and fee set by the licensing authority, not to
 958 exceed \$500. The licensing authority may adopt rules for the
 959 renewal of a funeral director or embalmer license. The rules may
 960 require ~~prescribe by rule~~ continuing education ~~requirements~~ of
 961 up to 12 classroom hours and may ~~by rule~~ establish criteria for
 962 accepting alternative nonclassroom continuing education on an
 963 hour-for-hour basis, in addition to a licensing authority-
 964 approved course on communicable diseases ~~that includes the~~
 965 ~~course on human immunodeficiency virus and acquired immune~~
 966 ~~deficiency syndrome required by s. 497.367,~~ for the renewal of a
 967 funeral director or embalmer license. The rules ~~rule~~ may also
 968 provide for the waiver of continuing education requirements in
 969 circumstances that would justify the waiver, such as hardship,
 970 disability, or illness. The continuing education requirement is
 971 not required for a licensee who is over the age of 75 years if
 972 the licensee does not qualify as the sole person in charge of an
 973 establishment or facility.

CS/HB 527

2010

974 Section 21. Subsections (7) and (12) of section 497.380,
 975 Florida Statutes, are amended, and subsection (15) is added to
 976 that section, to read:

977 497.380 Funeral establishment; licensure; display of
 978 license.—

979 (7) Each licensed funeral establishment shall have one
 980 full-time funeral director in charge and shall have a licensed
 981 funeral director reasonably available to the public during
 982 normal business hours for the ~~that~~ establishment. The full-time
 983 funeral director in charge is responsible for ensuring that the
 984 facility, its operation, and all persons employed in the
 985 facility comply with all applicable state and federal laws and
 986 rules. The full-time funeral director in charge must have an
 987 active license and may not be the full-time funeral director in
 988 charge of any other funeral establishment or of any other direct
 989 disposal establishment. Effective October 1, 2010, the full-time
 990 funeral director in charge must hold an active, valid embalmer
 991 license or combination license as a funeral director and an
 992 embalmer. However, a funeral director may continue as the full-
 993 time funeral director in charge without an embalmer or
 994 combination license if, as of September 30, 2010:

995 (a) The funeral establishment and the funeral director
 996 both have active, valid licenses.

997 (b) The funeral director is currently the full-time
 998 funeral director in charge of the funeral establishment.

999 (c) The name of the funeral director was included, as
 1000 required in subsection (4), in the funeral establishment's most
 1001 recent application for issuance or renewal of its license or was

CS/HB 527

2010

1002 included in the establishment's report of change provided under
 1003 paragraph (12) (c).

1004 (12) (a) A change in ownership of a funeral establishment
 1005 shall be promptly reported pursuant to procedures established by
 1006 rule and shall require the relicensure of the funeral
 1007 establishment, including reinspection and payment of applicable
 1008 fees.

1009 (b) A change in location of a funeral establishment shall
 1010 be promptly reported to the licensing authority pursuant to
 1011 procedures established by rule. Operations by the licensee at a
 1012 new location may not commence until an inspection by the
 1013 licensing authority of the facilities, pursuant to rules of the
 1014 licensing authority, has been conducted and passed at the new
 1015 location.

1016 (c) A change in the funeral director in charge of a
 1017 funeral establishment shall be promptly reported pursuant to
 1018 procedures established by rule.

1019 (15) (a) A funeral establishment and each funeral director
 1020 and, if applicable, embalmer employed at the establishment must
 1021 display their current licenses in a conspicuous place within the
 1022 establishment in such a manner as to make the licenses visible
 1023 to the public and to facilitate inspection by the licensing
 1024 authority. If a licensee is simultaneously employed at more than
 1025 one location, the licensee may display a copy of the license in
 1026 lieu of the original.

1027 (b) Each licensee shall permanently affix a photograph
 1028 taken of the licensee within the previous 6 years to each

CS/HB 527

2010

1029 displayed license issued to that licensee as a funeral director
 1030 or embalmer.

1031 Section 22. Section 497.4555, Florida Statutes, is created
 1032 to read:

1033 497.4555 Charges for preneed contract.-A preneed licensee
 1034 may charge the purchaser of a preneed contract for processing,
 1035 filing, and archiving the contract and for performing other
 1036 administrative duties related to the contract. A preneed
 1037 licensee must disclose these charges to the purchaser and
 1038 include them on its standard printed price lists and other
 1039 disclosure information provided to the public under s. 497.468.
 1040 These charges are not subject to the trust deposit requirements
 1041 in s. 497.458. The department may, subject to approval by the
 1042 board, adopt rules to administer this section.

1043 Section 23. Paragraph (a) of subsection (13) of section
 1044 497.456, Florida Statutes, is amended to read:

1045 497.456 Preneed Funeral Contract Consumer Protection Trust
 1046 Fund.-

1047 (13) Regarding the Preneed Funeral Contract Consumer
 1048 Protection Trust Fund, the licensing authority shall have
 1049 authority to adopt rules for the implementation of this section,
 1050 including:

1051 (a) Forms to be used in filing claims against the trust
 1052 fund, which may require that the claims be sworn to or affirmed,
 1053 and that the forms be signed, before a notary public.

1054 Section 24. Subsections (3) and (7) of section 497.464,
 1055 Florida Statutes, are amended to read:

1056 497.464 Alternative preneed contracts.-

CS/HB 527

2010

1057 (3) The contract must require that the purchaser make all
 1058 payments required by the contract directly to the trustee or its
 1059 qualified servicing agent ~~and that the funds shall be deposited~~
 1060 ~~in this state~~, subject to the terms of a trust instrument
 1061 approved by the licensing authority. The licensing authority may
 1062 adopt rules establishing procedures and forms for the submission
 1063 of trust instruments for approval by the licensing authority,
 1064 establishing criteria for the approval of such trust
 1065 instruments, and specifying information required to be provided
 1066 by the applicant in connection with submission of a trust
 1067 instrument for approval. A copy of the trust instrument shall be
 1068 made available to the purchaser, at any reasonable time, upon
 1069 request.

1070 (7) The trustee shall disburse ~~Disbursement of funds~~
 1071 discharging a any preneed contract ~~shall be made by the trustee~~
 1072 to the person issuing or writing the such contract upon the
 1073 trustee's receipt of a certified copy of the contract
 1074 beneficiary's death certificate or satisfactory of the contract
 1075 beneficiary and evidence, as the licensing authority shall
 1076 define by rule, satisfactory to the trustee that the preneed
 1077 contract has been fully performed in whole or in part. However,
 1078 if the contract is only partially performed, the disbursement
 1079 shall only cover that portion of the contract performed. In the
 1080 event of any contract default by the contract purchaser, or in
 1081 the event that the funeral merchandise or service contracted for
 1082 is not provided or is not desired by the purchaser or the heirs
 1083 or personal representative of the contract beneficiary, the
 1084 trustee shall return, within 30 days after its receipt of a

CS/HB 527

2010

1085 written request therefor, funds paid on the contract to the
 1086 contract purchaser or to her or his assigns, heirs, or personal
 1087 representative, subject to the lawful liquidation damage
 1088 provision in the contract.

1089 Section 25. Paragraph (b) of subsection (3) and subsection
 1090 (5) of section 497.602, Florida Statutes, are amended to read:

1091 497.602 Direct disposers, license required; licensing
 1092 procedures and criteria; regulation.-

1093 (3) ACTION CONCERNING APPLICATIONS.-A duly completed
 1094 application for licensure under this section, accompanied by the
 1095 required fees, shall be approved if the licensing authority
 1096 determines that the following conditions are met:

1097 (b) The applicant has taken and received a passing grade
 1098 in a college credit course in ~~Florida~~ mortuary law and has taken
 1099 and received a passing grade in a college credit course in
 1100 ethics.

1101 ~~(5) DISPLAY OF LICENSE. There shall be adopted rules which~~
 1102 ~~require each license issued under this section to be displayed~~
 1103 ~~in such a manner as to make it visible to the public and to~~
 1104 ~~facilitate inspection by the department. Each licensee shall~~
 1105 ~~permanently affix a recent photograph of the licensee to each~~
 1106 ~~displayed license issued to that licensee as a direct disposer.~~

1107 Section 26. Subsection (2) of section 497.603, Florida
 1108 Statutes, is amended to read:

1109 497.603 Direct disposers, renewal of license.-

1110 (2) The licensing authority ~~There shall adopt be adopted~~
 1111 ~~rules establishing~~ procedures, forms, and a schedule and forms
 1112 ~~and procedure~~ for the biennial renewal of direct disposer

CS/HB 527

2010

1113 licenses ~~as direct disposers. The rules~~ There shall require be
 1114 ~~adopted by rule~~ continuing education requirements of up to 6
 1115 classroom hours, including, but not limited to, a course on
 1116 communicable diseases approved by the licensing authority, and
 1117 ~~there may establish by rule be established~~ criteria for
 1118 accepting alternative nonclassroom continuing education on an
 1119 hour-for-hour basis, ~~in addition to an approved course on~~
 1120 ~~communicable diseases that includes the course on human~~
 1121 ~~immunodeficiency virus and acquired immune deficiency syndrome~~
 1122 ~~required by s. 497.367, for the renewal of a license as a direct~~
 1123 ~~disposer.~~

1124 Section 27. Paragraph (c) of subsection (2), subsection
 1125 (8), and paragraph (d) of subsection (9) of section 497.604,
 1126 Florida Statutes, are amended, and subsection (10) is added to
 1127 that section, to read:

1128 497.604 Direct disposal establishments, license required;
 1129 licensing procedures and criteria; license renewal; regulation;
 1130 display of license.-

1131 (2) APPLICATION PROCEDURES.-

1132 (c) The application shall name the licensed direct
 1133 disposer or licensed funeral director ~~who will be acting as the~~
 1134 ~~a~~ direct disposer in charge of the direct disposal
 1135 establishment.

1136 (8) SUPERVISION OF FACILITIES.-

1137 (a) Effective October 1, 2010, each direct disposal
 1138 establishment shall have one full-time ~~licensed direct disposer~~
 1139 ~~or~~ licensed funeral director acting as the ~~a~~ direct disposer in

CS/HB 527

2010

1140 charge. However, a licensed direct disposer may continue acting
 1141 as the direct disposer in charge, if, as of September 30, 2010:

1142 1. The direct disposal establishment and the licensed
 1143 direct disposer both have active, valid licenses.

1144 2. The licensed direct disposer is currently acting as the
 1145 direct disposer in charge of the direct disposal establishment.

1146 3. The name of the licensed direct disposer was included,
 1147 as required in paragraph (2)(c), in the direct disposal
 1148 establishment's most recent application for issuance or renewal
 1149 of its license or was included in the establishment's notice of
 1150 change provided under subsection (7).

1151 (b) The licensed funeral director or licensed direct
 1152 disposer in charge of a direct disposal establishment must be
 1153 ~~and~~ reasonably available to the public during normal business
 1154 hours for the ~~that~~ establishment and. ~~Such person~~ may be in
 1155 charge of only one direct disposal establishment facility. The
 1156 ~~Such~~ licensed funeral director or licensed direct disposer in
 1157 charge of the establishment is ~~shall be~~ responsible for making
 1158 sure the facility, its operations, and all persons employed in
 1159 the facility comply with all applicable state and federal laws
 1160 and rules.

1161 (9) REGULATION OF DIRECT DISPOSAL ESTABLISHMENTS.—

1162 (d) Each direct disposal establishment must display at the
 1163 public entrance the name of the establishment and the name of
 1164 the licensed direct disposer or licensed funeral director acting
 1165 as the ~~a~~ direct disposer in charge of the ~~responsible for that~~
 1166 establishment. A direct disposal establishment must transact its
 1167 business under the name by which it is licensed.

CS/HB 527

2010

1168 (10) DISPLAY OF LICENSE.-

1169 (a) A direct disposer establishment and each direct
 1170 disposer, or funeral director acting as a direct disposer,
 1171 employed at the establishment must display their current
 1172 licenses in a conspicuous place within the establishment in such
 1173 a manner as to make the licenses visible to the public and to
 1174 facilitate inspection by the licensing authority. If a licensee
 1175 is simultaneously employed at more than one location, the
 1176 licensee may display a copy of the license in lieu of the
 1177 original.

1178 (b) Each licensee shall permanently affix a photograph
 1179 taken of the licensee within the previous 6 years to each
 1180 displayed license issued to that licensee as a direct disposer
 1181 or funeral director acting as a direct disposer.

1182 Section 28. Section 497.367, Florida Statutes, is
 1183 repealed.

1184 Section 29. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS


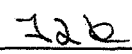
BILL #: CS/CS/HB 617

Limestone Mining

SPONSOR(S): Agriculture and Natural Resources Policy Committee, Natural Resources Appropriations Committee, Bemby

TIED BILLS:

IDEN./SIM. BILLS: SB 1338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Agriculture & Natural Resources Policy Committee</u>	<u>13 Y, 0 N, As CS</u>	<u>Deslatte</u>	<u>Reese</u>
2) <u>Natural Resources Appropriations Committee</u>	<u>12 Y, 0 N, As CS</u>	<u>Smith Brown</u>	<u>Dixon</u>
3) <u>General Government Policy Council</u>		<u>Deslatte</u> 	<u>Hamby</u> 
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill replaces outdated mitigation ratio language, specific to limestone, with the use of the uniform wetland mitigation assessment method when determining the amount of wetland mitigation. The bill proposes that for limestone mines, the amount of the financial responsibility mechanism for the construction of wetland mitigation be reduced from the amount required for the impacts during the entire life of the project to the amount required for three years of impacts. The initial amount of financial responsibility for permitted activities will be provided for 110% of the estimated mitigation costs affected in the first three years of operations. Each year after that, the amount of the financial responsibility will be updated for the next year of operations.

The bill would authorize limestone mine operators to apply for a life-of-the-mine permit. The Department of Environmental Protection (DEP) will coordinate and integrate the processing of the application with the application for other permits, such as industrial wastewater discharge permits and National Pollution Discharge and Elimination System (NPDES) permits. Nothing shall restrict or limit the authority of a local government to approve, approve with conditions, deny, or impose a permit duration different than the permit duration issued by the DEP.

Current law states that the fee for a life-of-the-mine permit application is equal to the aggregate of the application fees for separate permits that authorize the activities covered by the life-of-the-mine permit. Currently, the limestone operators pay for application fees and annual assessments for multiple permits. This bill would allow for consolidating those permits into one life-of-the-mine permit at the same aggregate cost of the multiple permits. Therefore, there should be negligible fiscal impact on the department.

The bill takes effect upon becoming law.

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:

Current Situation

Aggregate Mine Permitting

The Mandatory Nonphosphate Program, within the DEP's Bureau of Mine Reclamation, administers the laws and regulations related to the reclamation of mined land and the protection of water resources (water quality, water quantity and wetlands) at mines extracting heavy minerals, fuller's earth, limestone, dolomite & shell, gravel, sand, dirt, clay, peat, and other solid resources (except phosphate). The section administers two regulatory programs: Environmental Resource Permitting (ERP) and Reclamation.

- ERP regulates the creation or alteration of water bodies, including old mine pits. It may also be required for the creation of impervious areas and for certain projects exclusively in uplands. These permits focus on how the activity will affect wetlands, water quality, and water quantity. How changes to wetlands affect wildlife are also considered when ERPs are issued.
- Reclamation means the reasonable rehabilitation of land where resource extraction has occurred. Areas disturbed by mining operations, and subject to the reclamation requirements, must be reclaimed after mining is complete. Debris, litter, junk, worn-out or unusable equipment or materials must be appropriately disposed. The land must be recontoured and stabilized to control erosion. Bare areas must be revegetated. Prior to mining, the operator must provide a conceptual mining and reclamation plan or a reclamation notice.

Specific to limestone mining, s. 378.501, F.S., provides that no operator may begin the process of limestone resource extraction at a new mine without notifying the Secretary of DEP of the intention to mine. The operator's notice of intent to mine must include, but not be limited to:

- The operator's conceptual mining plan, which is comprised of such maps and other supporting documents as may be reasonably required by the DEP, the operator's time schedule that assures that the reclamation process is achieved in a timely manner, and the operator's estimated life of the mine.
- The operator's signed acknowledgment of the limestone reclamation performance standards provided by s. 378.503, F.S.

In addition to the regulatory programs discussed above, many mining activities are subject to other regulatory requirements. If water will be pumped or moved, a water/consumptive use permit may be required from the water management district. If wetlands or surface waters will be altered, a federal dredge and fill permit may be required from the U.S. Army Corps of Engineers. In order to address stormwater runoff and industrial waste discharges, an industrial wastewater permit may be required from the Industrial Wastewater Program within the DEP.

As an alternative, operators who mine heavy minerals or fuller's earth can apply for life-of-the-mine permits. The application for a life-of-the-mine permit is reviewed based on the requirements of the statutes and rules for the ERP and conceptual mining and reclamation plan. The DEP will coordinate and integrate the processing of the application with the applications for the other permits. The application for the life-of-the-mine permit must be approved or denied within 135 days of a complete application. It should be noted that this period is longer than the 90-day period for ERPs and conceptual mining and reclamation plans¹.

Mining and wetland mitigation

Before dredging or filling of a wetland area can begin, the financial responsibility for the completion of wetland mitigation must be provided. The financial responsibility mechanism must be equal to 110% of the estimated mitigation costs for all mitigation proposed during the life of the project. This mechanism can be very high for large projects with an expected long life expectancy and may be provided years prior to the adverse impacts to wetlands. An exception to this is an ERP for phosphate mining. For these type of permits, the initial financial responsibility mechanism must be sufficient for the mitigation of impacts to wetlands and other surface waters during the first three years of operation. After that, the financial responsibility mechanism is updated annually. The types of acceptable financial responsibility mechanisms are provided in the rules of the water management districts. The provisions of this subsection do not apply to any mitigation required pursuant to a permit initially issued by the DEP or water management district prior to January 1, 2005².

Effect of Proposed Changes

The bill amends s. 373.414, F.S., replacing outdated mitigation ratio language, specific to limestone, with the use of the uniform wetland mitigation assessment method when determining the amount of wetland mitigation. The bill proposes that for limestone mines, the amount of the financial responsibility mechanism for the construction of wetland mitigation be reduced from the amount required for the impacts during the entire life of the project to the amount required for three years of impacts. The initial amount of financial responsibility for permitted activities will be provided for 110% of the estimated mitigation costs affected in the first three years of operations. Each year after that, the amount of the financial responsibility will be updated for the next year of operations.

The bill amends s. 378.901, F.S., authorizing limestone mine operators or the operator of an existing mine to apply for life-of-the-mine permits. DEP will coordinate and integrate the processing of the application with the application for other permits, such as industrial wastewater discharge permits and NPDES permits. Nothing shall restrict or limit the authority of a local government to approve, approve with conditions, deny, or impose a permit duration different than the permit duration issued by the DEP.

B. SECTION DIRECTORY:

Section 1. Amends s. 373.414, F.S., providing that financial responsibility for mitigation for wetlands and other surface waters required by a permit for activities associated with the extraction of limestone are subject to approval by the DEP as part of permit application review.

Section 2. Amends s. 378.901, F.S., authorizing existing mine operators and mine operators proposing to mine or extract limestone to apply for a life-of-the-mine permit; providing an exception for life-of-the-mine permit application review requirements.

¹ Department of Environmental Protection 2010 analysis

² *Id.*

Section 3. Provides an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments below

2. Expenditures:

See Fiscal Comments below

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DEP's analysis, limestone mine operators taking advantage of the proposed changes will be required to update the estimated mitigation costs and financial responsibility mechanism annually. DEP also notes that the operators will have a lower amount of the financial assurance mechanism encumbered at any given time during the life of the project.

D. FISCAL COMMENTS:

Current law states the fee for a life-of-the-mine permit application is equal to the aggregate of the application fees for separate permits that authorize the activities covered by the life-of-the-mine permit. Currently, the limestone operators pay for application fees and annual assessments for multiple permits. This bill would allow for consolidating those permits into one life-of-the-mine permit at the same aggregate cost of the multiple permits. Therefore, there should be negligible fiscal impact on the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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:

STORAGE NAME: h0617d.GGPC.doc
DATE: 3/9/2010

DEP provided the following comments:

Line 15 of the bill applies the financial responsibility provisions to the extraction of limestone **and** phosphate. In this context only a mine that extracts both limestone and phosphate would appear to meet the provisions of s. 373.414(19)(a), F.S., as amended.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the Agriculture & Natural Resources Policy Committee amended and passed HB 617 as a Committee Substitute (CS). The amendment deletes conforming terminology and the retroactivity language. The amendment adds that nothing shall restrict or limit the authority of a local government to approve, approve with conditions, deny, or impose a permit duration different than the permit duration issued by the DEP.

On March 4, 2010, the Natural Resources Appropriations Committee adopted an amendment clarifying that the bill applies to operators of existing mines. This bill, as amended, was reported favorably as a committee substitute.

CS/CS/HB 617

2010

1 A bill to be entitled
 2 An act relating to mining and extraction activities;
 3 amending s. 373.414, F.S.; providing that financial
 4 responsibility for mitigation for wetlands and other
 5 surface waters required by a permit for activities
 6 associated with the extraction of limestone are subject to
 7 approval by the Department of Environmental Protection as
 8 part of permit application review; amending s. 378.901,
 9 F.S.; authorizing mine operators proposing to mine or
 10 extract limestone to apply for a life-of-the-mine permit;
 11 authorizing operators of existing mines to apply for a
 12 life-of-the-mine permit; clarifying the authority of local
 13 governments to approve, approve with conditions, deny, or
 14 impose certain permit durations; providing an effective
 15 date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraph (a) of subsection (19) of section
 20 373.414, Florida Statutes, is amended to read:

21 373.414 Additional criteria for activities in surface
 22 waters and wetlands.—

23 (19)(a) Financial responsibility for mitigation for
 24 wetlands and other surface waters required by a permit issued
 25 pursuant to this part for activities associated with the
 26 extraction of limestone and phosphate are subject to approval by
 27 the department as part of permit application review. Financial
 28 responsibility for permitted activities which will occur over a

CS/CS/HB 617

2010

29 | period of 3 years or less of mining operations must be provided
 30 | to the department prior to the commencement of mining operations
 31 | and shall be in an amount equal to 110 percent of the estimated
 32 | mitigation costs for wetlands and other surface waters affected
 33 | under the permit. For permitted activities which will occur over
 34 | a period of more than 3 years of mining operations, the initial
 35 | financial responsibility demonstration shall be in an amount
 36 | equal to 110 percent of the estimated mitigation costs for
 37 | wetlands and other surface waters affected in the first 3 years
 38 | of operation under the permit; and, for each year thereafter,
 39 | the financial responsibility demonstration shall be updated,
 40 | including to provide an amount equal to 110 percent of the
 41 | estimated mitigation costs for the next year of operations under
 42 | the permit for which financial responsibility has not already
 43 | been demonstrated and to release portions of the financial
 44 | responsibility mechanisms in accordance with applicable rules.

45 | Section 2. Subsection (2) of section 378.901, Florida
 46 | Statutes, is amended to read:

47 | 378.901 Life-of-the-mine permit.—

48 | (2) As an alternative to, and in lieu of, separate
 49 | applications for permits required by part IV of chapter 373 and
 50 | part IV of this chapter, each operator who proposes to mine or
 51 | extract heavy minerals, limestone, or fuller's earth clay or the
 52 | operator of an existing mine may apply to the bureau for a life-
 53 | of-the-mine permit. Nothing in this subsection limits or
 54 | restricts the authority of a local government to approve,
 55 | approve with conditions, deny, or impose a permit duration
 56 | different from the duration of a permit issued pursuant to this

CS/CS/HB 617

2010

57 | section.

58 | Section 3. This act shall take effect upon becoming a law.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: General Government Policy
2 Council

3 Representative(s) Bemby offered the following:

4

5 **Amendment**

6 Remove line 50 and insert:

7 part IV of this chapter, each operator or existing operator who
8 proposes to mine or

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 765 Unlawful Slaughter of Horses
SPONSOR(S): Agriculture and Natural Resources Policy Committee, Garcia and others
TIED BILLS: IDEN./SIM. BILLS: SB 1708

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Agriculture & Natural Resources Policy Committee, 10 Y, 0 N, As CS, Thompson, Reese. Row 2: General Government Policy Council, Thompson, Hamby.

SUMMARY ANALYSIS

It has recently been reported that South Florida has experienced an increase in the illegal horse meat market. In response, in 2009, the Miami-Dade County Board of County Commissioners issued a resolution¹ urging the Florida Legislature to increase the criminal penalties related to the unlawful slaughter of horses.

The bill, in part:

- Creates four new horse meat for human consumption offenses: transporting, distributing, purchasing, or possessing.
Increases the penalties for said offenses to a third degree unranked felony.
Authorizes the sentencing of violent career criminals, habitual felony and habitual violent felony offenders, and three-time violent felony offenders of the horse meat for human consumption provision.
Provides for a minimum mandatory fine of \$3,500 and a minimum mandatory period of incarceration of one year for violations of said offenses.
Authorizes the suspension of any license of any restaurant, store, or other business, as provided for in the applicable licensing law, upon the conviction of an owner or employee of said business for a violation of the horse meat for human consumption provision.
Expands the classification of protection for registered breeds of horses to include any animal of the genus Equus (horse) and provides for a minimum mandatory fine of \$3,500 and period of incarceration of one year for violations of the horse killing or aggravated abuse provision.
Specifies that anyone convicted of a violation relating to animal cruelty or whose license to practice veterinary medicine has been revoked, suspended, inactive, or delinquent is not exempt from the veterinary license requirements provided for under chapter 474, F.S., relating to veterinary medical practice.
Revises procedures regarding custody proceedings relating to animals found in distress.

Although the bill creates a new third degree felony, the Department of Corrections anticipates an insignificant fiscal impact. The Criminal Justice Impact Conference determined that the bill will have an insignificant impact on prison admissions and populations. It is impossible to forecast how many violations might occur, thus the actual fiscal impact on state and local governments is unknown. Associated medical and insurance costs to the private sector may be reduced. (See Fiscal Comments section for additional details)

Unless otherwise provided, the bill has an effective date of July 1, 2010.

1 Miami-Dade Resolution No. R.-1215-09

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:

Present Situation

Generally, horse meat is consumed in parts of Europe, Asia and South America. In 2007, three horse slaughter plants operated in the United States (U.S.), two in Texas and one in Illinois, all owned by French and Belgian firms,² whereby the meat was primarily exported to foreign markets. Although a commercial market for horsemeat as food has never emerged in the U.S., it is reported that areas of South Florida are currently experiencing an increase in demand for such meat.³

It has recently been reported that areas of South Florida have experienced an increase in the illegal horse meat market.⁴ In 2009, South Florida experienced approximately twenty illegal horse slaughtering cases. According to the South Florida Society for the Prevention of Cruelty to Animals (SPCA),⁵ many of these horses are butchered for meat. According to the Miami-Dade Agricultural Patrol Unit, many of the resulting carcasses are left at the scene of the crime or on the roadside.⁶ In response, on October 20, 2009, the Miami-Dade County Board of County Commissioners issued a resolution⁷ urging the Florida Legislature to increase the criminal penalties related to the unlawful slaughter of horses.

During the 1996 regular session, the Legislature enacted laws⁸ repealing the State Meat Inspection Program within the Florida Department of Agriculture and Consumer Services (DACs). The repeal transferred the entire state program over to the federal government to be regulated by the U.S. Department of Agriculture (USDA). Currently, the DACs only provides inspection and testing programs for retail food stores, food processing plants, food storage and distribution points, and other locations in Florida where food is sold to the public.

² Dallas Crown, Inc. in Kaufman, Texas; Beltex Corporation in Fort Worth, Texas; and Cavel International, Inc. in DeKalb, Illinois

³ USA Today, South Florida sees rise in illegal horse meat market; Gomez, Alan; http://www.usatoday.com/news/nation/2009-10-05-horse-meat_N.htm

⁴ USA Today, South Florida sees rise in illegal horse meat market; Gomez, Alan; http://www.usatoday.com/news/nation/2009-10-05-horse-meat_N.htm

⁵ <http://www.sPCA-sofla.org/>

⁶ Per phone communication with Detective Mario Fernandez, Miami-Dade P.D. 305-252-8311

⁷ Miami-Dade Resolution No. R.-1215-09

⁸ 96-423, Laws of Florida

The Federal Meat Inspection Act (FMIA)⁹ requires the USDA to inspect all “amenable species” such as, cattle, sheep, goats, and horses when slaughtered for processing into products for human consumption. This act, administered by USDA’s Food Safety and Inspection Service (FSIS), aims to ensure that meat and meat products from these animals are safe, wholesome, and properly labeled. FSIS safety inspection is mandatory, and most costs are covered by appropriated funds.¹⁰ Without these inspections, there can be no legal sale or slaughter of horses for human consumption.

In 2005, Congress passed a provision¹¹ that would have stopped the USDA appropriation paying for the inspections of horses sold for slaughter. In response, the USDA issued a rule¹², amending the Congressional provision, creating a “fee-for-service” inspection program that allowed slaughterhouses to continue with inspections if the costs were borne by the slaughterhouses. Consequently, several national animal welfare organizations filed suit¹³ against the USDA for accepting private payments. On March 28, 2007, a United States District Court ruled that private (fee-for-service) payment to government entities is unconstitutional. This effectively cut the funding for inspections of horses sold for slaughter, thus, eliminating any legal means for the processing or sale of horse meat for human consumption in the U.S.

Proposed Changes

Veterinary Medical Practices

The Florida Veterinary Practice Act (Chapter 474, F.S.), “finds that the practice of veterinary medicine is potentially dangerous to the public health and safety if conducted by incompetent and unlicensed practitioners.” It provides exemptions relating to acts or conditions not in violation of the Florida Veterinary Practice Act.

Section 474.203(5)(b), F.S., specifies that this chapter does not apply to:

“A person hired on a part-time or temporary basis, or as an independent contractor, by an owner to assist with herd management and animal husbandry tasks for herd and flock animals, including castration, dehorning, parasite control, and debeaking, or a person hired on a part-time or temporary basis, or as an independent contractor, by an owner to provide farriery and manual hand floating of teeth on equines.”

The bill amends s. 474.203(5)(b), F.S., to specify the above part time worker exemption does not apply to any person who has been convicted of a violation of chapter 828, F.S., that relates to animal cruelty or a similar offense in another jurisdiction.

Section 474.203(7), F.S., specifies that this chapter does not apply to:

“Any veterinary aide, nurse, laboratory technician, preceptor, or other employee of a licensed veterinarian who administers medication or who renders auxiliary or supporting assistance under the responsible supervision of a licensed veterinarian, including those tasks identified by rule of the board requiring immediate supervision.”

The bill amends s. 474.203(7), F.S., to specify the above veterinary aid exemption does not apply to any person whose license to practice veterinary medicine is revoked, suspended, inactive, or delinquent, whether in this state, another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction; provide for technical changes.

⁹ 21 U.S.C., s. 603

¹⁰ Congressional Research Service, Horse Slaughter Prevention Bills and Issues; Becker, Geoffrey S.; May 8, 2009

¹¹ Section 794, an amendment to the FY 2006 Agricultural Appropriations Act

¹² 9 C.F.R. 352.19

¹³ Westlaw: 520 F.Supp.2d 8; Civil Action No. 06265

Horse Meat

Section 500.452, F.S., prohibits the sale of horse meat for human consumption in the markets of the state unless the meat is clearly stamped, marked, and described as horse meat for human consumption. Violations of this section are a misdemeanor of the second degree, punishable by a fine of not more than \$500 or sixty days in jail, or both.

HB 765 amends s. 500.451, F.S., to include four additional horse meat offenses: transporting, distributing, purchasing, or possessing. The bill expands the branding requirement¹⁴ to include the phrase "horsemeat that is not acquired from a licensed slaughterhouse." The bill increases violations to a third degree felony punishable by a \$5,000 fine and up to five years in jail plus applicable administrative fees and court costs.¹⁵ Additionally, the bill authorizes the sentencing of violent career criminals, habitual felony and habitual violent felony offenders, and three-time violent felony offenders¹⁶ of the horse meat for human consumption provision. The bill provides for a minimum mandatory fine of \$3,500 and a minimum mandatory period of incarceration of one year for horse meat for human consumption offenses. Additionally, the bill authorizes the suspension of any license of any restaurant, store, or other business, as provided for in the applicable licensing law, upon the conviction of an owner or employee of said business for a violation of this section. The bill provides that this section will become effective October 1, 2010.

Cruelty to Animals

Section 828.073, F.S. provides procedures by which a neglected or mistreated animal can be removed from custody or ordered to be cared for by its owner.

The bill amends s. 828.073, F.S., to:

- Create a timeframe of within 10 days after an animal is seized or upon issuance of an order to provide care, that law enforcement officers and animal cruelty prevention agents must file petitions for custody proceedings involving neglected animals.
- Consolidate the current timeframes of the scheduling and commencement hearings of the court to both be held within 30 days after such petitions are filed.
- Direct county courts to expedite the commencement of such custody proceedings and exempt the owner from payment of care provided for the animal during any period of delay caused by the officer or agent involved.
- Decrease the period from five to three days within which written notice must be served to the owner of the animal before the hearing date of such custody proceedings.
- Delete the order to serve notice in accordance with chapter 49, F.S., service of process, relating to when the owner of the animal is residing outside of the county where the animal was taken.
- Authorize the court, upon judgment that the owner of the animal is unable or unfit to adequately provide for the animal, to take certain actions regarding the disposal of the animal.
- Delete the provision requiring the testimony of the agent who took custody of the animal, or the testimony of other qualified witnesses in order for the court to order an animal destroyed or remanded into custody.
- Provide clarifying technical changes.

Section 828.125, F.S., prohibits the willful and unlawful killing, maiming, mutilating or causing of great bodily harm or permanent breeding disability to any animal of any registered breed of horse or cattle. Violations of this section are a second degree felony, punishable by a fine of not more than \$10,000 or 15 years in prison, or both.

The bill amends s. 828.125, F.S., to expand the classification of protection for registered breeds of horses to include any animal of the genus *Equus* (horse). Also, the bill provides for a minimum

¹⁴ s. 500.451(1), F.S.

¹⁵ ss. 775.082, 775.083, F.S.

¹⁶ s. 775.084, F.S.

mandatory fine of \$3,500 and a minimum mandatory period of incarceration of one year for violations of this section.

The bill provides that this section will become effective October 1, 2010. Also, the bill provides for clarifying technical changes in the sections named above.

B. SECTION DIRECTORY:

Section 1. Amends s. 474.203, F.S., providing circumstances that render inapplicable certain veterinary licensure exemptions pertaining to part-time and independent contractors; providing circumstances that render inapplicable an exemption for certain employees under veterinary supervision.

Section 2. Amends s. 500.451, F.S.; providing for four additional horse meat for consumption offenses; providing for increased violations and penalties; providing for suspension of licenses of certain businesses; providing for mandatory minimum penalties; providing for conforming technical changes in the section title; providing this section will become effective October 1, 2010.

Section 3. Amends s. 828.073, F.S., revising the procedures for law enforcement officers and certain animal cruelty prevention agents to file petitions in custody proceedings involving neglected animals; directing county courts to expedite the commencement of such proceedings; exempting animal owners from payment of the care provided for their animals during such proceedings under certain circumstances; revising the period within which written notice of such proceedings must be served; deleting a provision requiring publication of notices of such proceedings under certain circumstances; revising provisions relating to remand of neglected animals directly to the seizing officer or agent for disposition.

Section 4. Amends s. 828.125, F.S.; providing for an expanded classification of protected horses to apply to all horses regardless of breed; providing for mandatory minimum penalties; providing for conforming technical changes in the section title; providing this section will become effective October 1, 2010.

Section 3. Providing an effective date of October 1, 2010, unless otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill may improve the health of horses in Florida by reducing illegal slaughtering deaths, associated medical and insurance costs to the private sector may be decreased.

D. FISCAL COMMENTS:

The bill creates 4 new horse meat for human consumption offenses. It is impossible to predict how many additional violations will occur relating to these new offenses. The related fiscal impact is indeterminate.

Unless the bill expressly ranks the new felony offense on the state's offense severity ranking chart, s. 921.0022, F.S., the new felony will be "unranked." According to the Criminal Justice Impact Conference, this is not uncommon. An unranked, 3rd degree felony, defaults to Level 1 on the ranking chart, which is the least severe, thus imposing a lower percentage of related prison sentences.

According to the Department of Corrections (DOC), one conviction of the current horse meat provision has occurred in the last two years. Also according to DOC, it costs the state approximately \$20,000 per year for an incarcerated adult male. Consequently, the fiscal impact of increasing the classification of the current horse meat provision to a third degree unranked felony on the state may likely be insignificant.

Pursuant to s. 216.136(5), F.S., a function of the Criminal Justice Impact Conference (CJIC) is the development of official forecasts of prison admissions and population as they relate to new felonies. Typically, a new felony is not created until a consensus has been reached within the CJIC process. On February 23, 2010, the CJIC met and concluded that the effects of HB 765 will have an insignificant impact on prison admissions and populations.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

According to the State Constitution, a bill imposes a mandate if the substance of the bill requires 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 or municipalities.¹⁷

The mandates provision appears to apply because the bill requires a minimum incarceration of one year that would be served in county jail, thus requiring the county to spend related funds; however, an exemption applies because Article VII, Section 18(d) of the Florida Constitution, exempts criminal laws from the mandate requirement.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

¹⁷ Article VII, Section 18; Florida Constitution

C. DRAFTING ISSUES OR OTHER COMMENTS:

Minimum Mandatory Incarceration

The bill requires a minimum incarceration of one year. Pursuant to s. 922.051, F.S., a felony sentence of one year or less may be served in county jail if the total of the defendant's cumulative sentences is one year or less. Also, s. 775.08, F.S., distinguishing between felonies and misdemeanors, requires a person convicted of a felony to be imprisoned in the state penitentiary for a sentence exceeding one year.

If a person is sentenced to just the minimum mandatory, it would be served in county jail because that is where sentences of a year or less are served. If the judge sentences the person to longer than the minimum mandatory sentence, the time would be served in state prison. If the intent of the bill is to make sure that the person goes to state prison, rather than county jail, for the minimum mandatory, the sentence will have to be longer than a year.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, the Agriculture and Natural Resources Policy Committee adopted a strike-all amendment to this bill. In addition to the original provisions of the bill, the amendment:

- Specifies that anyone convicted of a violation relating to animal cruelty or whose license to practice veterinary medicine has been revoked, suspended, inactive, or delinquent is not exempt from the requirements provided for under chapter 474, F.S., relating to veterinary medical practice.
- Revises procedures regarding custody proceedings relating to animals found in distress.
- Provides an effective date of October 1, 2010, for the provisions amending to s. 500.451, F.S., relating to horse meat for consumption offenses and s. 828.125, F.S., relating to abuse of registered breeds of horses.

1 A bill to be entitled
2 An act relating to animal protection; amending s. 474.203,
3 F.S.; providing circumstances that render inapplicable
4 certain veterinary licensure exemptions pertaining to
5 part-time and independent contractors; providing
6 circumstances that render inapplicable an exemption for
7 certain employees under supervision; amending s. 500.451,
8 F.S.; prohibiting specified acts relating to horsemeat for
9 human consumption; providing penalties; increasing the
10 classification of offenses related to horsemeat for human
11 consumption; providing for suspension of licenses of
12 certain businesses for offenses related to horsemeat;
13 providing mandatory minimum penalties; amending s.
14 828.073, F.S.; revising procedures for law enforcement
15 officers and certain animal cruelty prevention agents to
16 file petitions in custody proceedings involving neglected
17 animals; directing county courts to expedite the
18 commencement of such proceedings; exempting animal owners
19 from payment of the care provided for their animals during
20 such proceedings under certain circumstances; revising the
21 period within which written notice of such proceedings
22 must be served; deleting a provision requiring publication
23 of notices of such proceedings under certain
24 circumstances; revising provisions relating to remand of
25 neglected animals directly to the seizing officer or agent
26 for disposition; amending s. 828.125, F.S.; revising
27 provisions prohibiting certain acts relating to horses to
28 apply to all horses regardless of breed; providing

CS/HB 765

2010

29 mandatory minimum penalties for violations involving
 30 horses or certain cattle; providing effective dates.

31

32 Be It Enacted by the Legislature of the State of Florida:

33

34 Section 1. Section 474.203, Florida Statutes, is amended
 35 to read:

36 474.203 Exemptions.—This chapter does ~~shall~~ not apply to:

37 (1) Any faculty member practicing only in conjunction with
 38 teaching duties at a school or college of veterinary medicine
 39 located in this state and accredited by the American Veterinary
 40 Medical Association Council on Education. However, this
 41 exemption applies ~~shall~~ only ~~apply~~ to such a faculty member who
 42 does not hold a valid license issued under this chapter, but who
 43 is a graduate of a school or college of veterinary medicine
 44 accredited by the American Veterinary Medical Association
 45 Council on Education or a school or college recognized by the
 46 American Veterinary Medical Association Commission for Foreign
 47 Veterinary Graduates. The faculty member exemption ~~shall~~
 48 automatically expires ~~expire~~ when such school or college
 49 terminates the faculty member from such teaching duties. On
 50 December 31 of each year, such school or college shall provide
 51 the board with a written list of all faculty who are exempt from
 52 this chapter. Such school or college shall also notify the board
 53 in writing of any additions or deletions to such list.

54 (2) A person practicing as an intern or resident
 55 veterinarian who does not hold a valid license issued under this
 56 chapter and who is a graduate in training at a school or college

CS/HB 765

2010

57 of veterinary medicine located in this state and accredited by
 58 the American Veterinary Medical Association Council on Education
 59 or a school or college recognized by the American Veterinary
 60 Medical Association Commission for Foreign Veterinary Graduates.
 61 Such intern or resident must be a graduate of a school or
 62 college of veterinary medicine accredited by the American
 63 Veterinary Medical Association Council on Education. This
 64 exemption expires when such intern or resident completes or is
 65 terminated from such training. Each school or college at which
 66 such intern or resident is in training shall, on July 1 of each
 67 year, provide the board with a written list of all such interns
 68 or residents designated for this exemption, and the school or
 69 college shall also notify the board of any additions or
 70 deletions to the list.

71 (3) A student in a school or college of veterinary
 72 medicine while in the performance of duties assigned by her or
 73 his instructor or when working as a preceptor under the
 74 immediate supervision of a licensee, if ~~provided that~~ such
 75 preceptorship is required for graduation from an accredited
 76 school or college of veterinary medicine. The licensed
 77 veterinarian is ~~shall be~~ responsible for all acts performed by a
 78 preceptor under her or his supervision.

79 (4) Any doctor of veterinary medicine in the employ of a
 80 state agency or the United States Government while actually
 81 engaged in the performance of her or his official duties;
 82 however, this exemption does ~~shall~~ not apply to such person when
 83 the person is not engaged in carrying out her or his official
 84 duties or is not working at the installations for which her or

CS/HB 765

2010

85 his services were engaged.

86 (5) (a) Any person, or the person's regular employee,
87 administering to the ills or injuries of her or his own animals,
88 including, but not limited to, castration, spaying, and
89 dehorning of herd animals, unless title has been transferred or
90 employment provided for the purpose of circumventing this law.
91 This exemption does ~~shall~~ not apply to out-of-state
92 veterinarians practicing temporarily in the state. However, only
93 a veterinarian may immunize or treat an animal for diseases that
94 ~~which~~ are communicable to humans and that ~~which~~ are of public
95 health significance.

96 (b) A person hired on a part-time or temporary basis, or
97 as an independent contractor, by an owner to assist with herd
98 management and animal husbandry tasks for herd and flock
99 animals, including castration, dehorning, parasite control, and
100 debeaking, or a person hired on a part-time or temporary basis,
101 or as an independent contractor, by an owner to provide farriery
102 and manual hand floating of teeth on equines. This exemption
103 does not apply to any person who has been convicted of a
104 violation of chapter 828 that relates to animal cruelty or a
105 similar offense in another jurisdiction.

106 (6) State agencies, accredited schools, institutions,
107 foundations, business corporations or associations, physicians
108 licensed to practice medicine and surgery in all its branches,
109 graduate doctors of veterinary medicine, or persons under the
110 direct supervision thereof, which or who conduct experiments and
111 scientific research on animals in the development of
112 pharmaceuticals, biologicals, serums, or methods of treatment,

CS/HB 765

2010

113 or techniques for the diagnosis or treatment of human ailments,
114 or when engaged in the study and development of methods and
115 techniques directly or indirectly applicable to the problems of
116 the practice of veterinary medicine.

117 (7) Any veterinary aide, nurse, laboratory technician,
118 preceptor, or other employee of a licensed veterinarian who
119 administers medication or who renders auxiliary or supporting
120 assistance under the responsible supervision of a licensed
121 veterinarian, including those tasks identified by rule of the
122 board requiring immediate supervision. However, the licensed
123 veterinarian is ~~shall be~~ responsible for all such acts performed
124 under this subsection by persons under her or his supervision.
125 This exemption does not apply to any person whose license to
126 practice veterinary medicine is revoked, suspended, inactive, or
127 delinquent, whether in this state, another state, the District
128 of Columbia, any possession or territory of the United States,
129 or any foreign jurisdiction.

130 (8) A veterinarian, licensed by and actively practicing
131 veterinary medicine in another state, who is board certified in
132 a specialty recognized by the board and who responds to a
133 request of a veterinarian licensed in this state to assist with
134 the treatment on a specific case of a specific animal or with
135 the treatment on a specific case of the animals of a single
136 owner, as long as the veterinarian licensed in this state
137 requests the other veterinarian's presence. A veterinarian who
138 practices under this subsection is not eligible to apply for a
139 premises permit under s. 474.215.

140

CS/HB 765

2010

141 For the purposes of chapters 465 and 893, persons exempt
 142 pursuant to subsection (1), subsection (2), or subsection (4)
 143 are deemed to be duly licensed practitioners authorized by the
 144 laws of this state to prescribe drugs or medicinal supplies.

145 Section 2. Effective October 1, 2010, section 500.451,
 146 Florida Statutes, is amended to read:

147 500.451 Horse meat; offenses ~~sale for human consumption.~~

148 (1) It is unlawful for any person to:

149 (a) Sell in the markets of this state horse meat for human
 150 consumption unless the horse meat is clearly stamped, marked,
 151 and described as horse meat for human consumption.

152 (b) Knowingly transport, distribute, sell, purchase, or
 153 possess horsemeat for human consumption that is not clearly
 154 stamped, marked, and described as horsemeat for human
 155 consumption or horsemeat that is not acquired from a licensed
 156 slaughterhouse.

157 (2) A person that violates this section commits ~~is guilty~~
 158 ~~of a~~ felony misdemeanor of the third ~~second~~ degree, punishable
 159 as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084, except
 160 that any person who commits a violation of this section shall be
 161 sentenced to a minimum mandatory fine of \$3,500 and a minimum
 162 mandatory period of incarceration of 1 year.

163 (3) In addition to any penalties provided in subsection
 164 (2), any license of any restaurant, store, or other business may
 165 be suspended as provided in the applicable licensing law upon
 166 conviction of an owner or employee of that business for a
 167 violation of this section in connection with that business.

168 Section 3. Subsections (2) and (3) and paragraph (c) of

CS/HB 765

2010

169 subsection (4) of section 828.073, Florida Statutes, are amended
 170 to read:

171 828.073 Animals found in distress; when agent may take
 172 charge; hearing; disposition; sale.-

173 (2) Any law enforcement officer or any agent of any county
 174 or of any society or association for the prevention of cruelty
 175 to animals appointed under the provisions of s. 828.03 may:

176 (a) Lawfully take custody of any animal found neglected or
 177 cruelly treated by removing the animal from its present
 178 location, or

179 (b) Order the owner of any animal found neglected or
 180 cruelly treated to provide certain care to the animal at the
 181 owner's expense without removal of the animal from its present
 182 location,

183
 184 and shall file a ~~forthwith~~ petition seeking relief under this
 185 section in the county court ~~judge~~ of the county in which ~~wherein~~
 186 the animal is found within 10 days after the animal is seized or
 187 an order to provide care is issued. The court shall schedule and
 188 commence ~~for~~ a hearing on the petition, ~~to be set~~ within 30 days
 189 after the petition is filed ~~date of seizure of the animal or~~
 190 ~~issuance of the order to provide care and held not more than 15~~
 191 ~~days after the setting of such date,~~ to determine whether the
 192 owner, if known, is able to provide adequately for the animal
 193 and is fit to have custody of the animal. The hearing shall be
 194 concluded and the court order entered thereon within 60 days
 195 after the date the hearing is commenced. The county court shall
 196 establish procedures to expedite the commencement of hearings on

CS/HB 765

2010

197 | petitions filed under this subsection. The timeframes set forth
 198 | in this subsection are not jurisdictional. However, if a failure
 199 | to meet such timeframes is attributable to the officer or agent,
 200 | the owner is not required to pay the officer or agent for care
 201 | of the animal during any period of delay caused by the officer
 202 | or agent. A No fee may not shall be charged for the filing of
 203 | the petition. This subsection does not ~~Nothing herein is~~
 204 | ~~intended to~~ require court action for the taking into custody and
 205 | making proper disposition of stray or abandoned animals as
 206 | lawfully performed by animal control agents.

207 | (3) The officer or agent of any county or of any society
 208 | or association for the prevention of cruelty to animals taking
 209 | charge of any animal pursuant to the provisions of this section
 210 | shall have written notice served, at least 3 5 days before ~~prior~~
 211 | ~~to~~ the hearing scheduled under ~~set forth in~~ subsection (2), upon
 212 | the owner of the animal, if he or she is known and is residing
 213 | in the county where the animal was taken, in conformance with
 214 | the provisions of chapter 48 relating to service of process. The
 215 | sheriff of the county shall not charge a fee for service of such
 216 | notice. ~~If the owner of the animal is known but is residing~~
 217 | ~~outside of the county wherein the animal was taken, notice of~~
 218 | ~~the hearing shall be by publication in conformance with the~~
 219 | ~~provisions of chapter 49.~~

220 | (4)

221 | (c) Upon the court's judgment that the owner of the animal
 222 | is unable or unfit to adequately provide for the animal:

223 | 1. The court may: ~~shall~~

224 | a. Order that the animal ~~to~~ be sold by the sheriff at

CS/HB 765

2010

225 public auction, ~~and shall provide in its order~~ that the current
 226 owner ~~shall~~ have no further custody of the animal, and that any
 227 animal not bid upon ~~shall~~ be remanded to the custody of the
 228 Society for the Prevention of Cruelty to Animals, the Humane
 229 Society, the county, or any agency or person the judge deems
 230 appropriate, to be disposed of as the agency or person sees fit;
 231 or

232 b.2. ~~The court may Order that the animal be destroyed or~~
 233 ~~remanded directly to the custody of the Society for the~~
 234 ~~Prevention of Cruelty to Animals, the Humane Society, the~~
 235 ~~county, or any agency or person the judge deems appropriate, to~~
 236 ~~be disposed of as the agency or person sees fit, upon the~~
 237 ~~testimony of the agent who took custody of the animal, or upon~~
 238 ~~the testimony of other qualified witnesses, that the animal~~
 239 ~~requires destruction or other disposition for humanitarian~~
 240 ~~reasons or is of no commercial value.~~

241 2.3. The court, upon proof of costs incurred by the
 242 officer or agent ~~or officer,~~ the court may require that the
 243 owner pay for the care of the animal while in the custody of the
 244 officer or agent ~~or officer.~~ A separate hearing may be held.

245 3.4. The court may order that other animals that are in
 246 the custody of the owner and that were not seized by the officer
 247 or agent be turned over to the officer or agent, if the court
 248 determines that the owner is unable or unfit to adequately
 249 provide for the animals. The court may enjoin the owner's
 250 further possession or custody of other animals.

251 Section 4. Effective October 1, 2010, section (1) of
 252 section 828.125, Florida Statutes, is amended to read:

CS/HB 765

2010

253 828.125 Killing or aggravated abuse of ~~registered breed~~
 254 horses or cattle; offenses; penalties.—Any other provisions of
 255 this chapter to the contrary notwithstanding:

256 (1) Any person who willfully and unlawfully, by any means
 257 whatsoever, kills, maims, mutilates, or causes great bodily harm
 258 or permanent breeding disability to any animal of the genus
 259 Equus (horse) or any animal of any registered breed or
 260 recognized registered hybrid of the genus ~~Equus (horse) or genus~~
 261 ~~Bos (cattle) commits, or any recognized registered hybrid of the~~
 262 ~~specified genera, shall be guilty of a felony of the second~~
 263 degree, punishable as provided by s. 775.082, s. 775.083, or s.
 264 775.084, except that any person who commits a violation of this
 265 subsection shall be sentenced to a minimum mandatory fine of
 266 \$3,500 and a minimum mandatory period of incarceration of 1
 267 year.

268 Section 5. Except as otherwise expressly provided in this
 269 act, act shall take effect July 1, 2010.