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S 156 GENERAL BILL by Crenshaw and others (Similar H 457)

Disposition & Burial of Bodies; revives & readopts provisions re funeral directing, embalming, & direct disposition; revives & readopts provisions re cemeteries; provides for future repeal & review of such chapters pursuant to Regulatory Sunset Act. Revives/readopts 470.001-.003,.005-.0395, Ch. 497. Effective Date: 05/15/89.

02/06/89 SENATE Prefiled

02/13/89 SENATE Referred to Commerce

04/04/89 SENATE Introduced, referred to Commerce -SJ 20

04/13/89 SENATE On Committee agenda—Commerce, 04/17/89, 2:00 pm, Room-A-(LL-37)

04/14/89 SENATE Extension of time granted Committee Commerce

04/17/89 SENATE Comm. Report: Favorable by Commerce, placed on Calendar -SJ 173

04/27/89 SENATE Placed on Special Order Calendar -SJ 210; Passed; YEAS 31 NAYS 0 -SJ 233; Immediately certified -SJ 233

04/27/89 HOUSE In Messages

04/28/89 HOUSE Received, placed on Calendar -HJ 298; Substituted for HB 457 -HJ 300; Read second time; Read third time; Passed; YEAS 108 NAYS 0 -HJ 300

05/02/89 Ordered enrolled -SJ 247

05/08/89 Signed by Officers and presented to Governor -SJ 287

05/15/89 Approved by Governor; Chapter No. 89-8 -SJ 360

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: _____

BILL NO. SB 0156DATE: April 12, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Fentriss</u>	<u>Wilkes</u>	1. <u>COM</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Disposition and Burial of
Bodies, Funerals, Cemeteries,
and Preneed Funeral Merchandise or
Service Contracts

BILL NO. AND SPONSOR:

SB 0156 by
Senator Crenshaw and others

I. SUMMARY:

A. Present Situation:

Chapter 470, F.S., provides for qualifications for and regulation of the practice of embalming and funeral directing. This chapter creates a seven member Board of Funeral Directors and Embalmers within the Department of Professional Regulation. Five of the members must be licensees under ch. 470, F.S., and the remaining two must be Florida residents with no affiliation with or experience in the practice of embalming or funeral directing. This board is authorized to make rules necessary to protect the health, safety, and welfare of the public. This chapter requires licensure or registration of embalmers, funeral directors, and direct disposers as well as direct disposal establishments, funeral establishments, and cinerator facilities. In addition, this chapter regulates cremation procedures, solicitation of goods or services, funeral merchandise, reporting of cases embalmed and bodies handled, and removal of embalmed bodies. Provision is also made for disclosure of information to the public and itemized price lists.

Chapter 497, F.S., provides for the regulation and licensure of cemetery companies. The purpose of this chapter is to provide the regulation necessary to assure that the public is protected from economic harm or other damage from potential lack of proper maintenance of cemetery grounds or failure to set aside for future use funds provided by purchasers of preneed burial rights or cemetery merchandise. The provisions of this chapter are administered by the Department of Banking and Finance.

Chapter 639, F.S., provides for the regulation of preneed funeral merchandise or service contracts by the Department of Insurance. A preneed contract is a contract to furnish funeral merchandise or service in the future, and anyone wishing to sell preneed contracts must obtain a certificate of authority.

Chapter 88-139, L.O.F., amended sections of ch. 639, F.S., in order to address an Internal Revenue Service tax provision which states that the purchasers of preneed funeral services, rather than the sellers, are the grantors and the owners of preneed funeral trusts established under state laws. Under the Internal Revenue Code, the grantor of the trust is subject to the tax on the interest income. Internal Revenue Service Ruling 87-127 states that although the purchaser's money is paid to the seller, under state law the seller does not have dominion and control over it and is not free to dispose of it except to place the money in trust. This ruling has a negative impact on consumers and purchasers of preneed funeral contracts in that these purchasers will have to pay income taxes on interest income which they never receive or use. In response

to the IRS ruling, ch. 88-139, L.O.F., provides that funeral directors, direct disposers, funeral establishments, and other such holders of certificates of authority from the Department of Insurance will be liable for the taxes on the interest income.

The provisions of each chapter expire or are repealed on a given date and are subject to review pursuant to s. 11.61, F.S., in advance of the expiration date. Chapter 470, F.S., is repealed on October 1, 1990; ch. 497, F.S., is repealed on October 1, 1990; and ch. 639, F.S., expires on October 1, 1993. Chapter 470, F.S., was reviewed and amended in 1979 by ch. 79-231, L.O.F. Chapter 497, F.S., (formerly part IV of ch. 559, F.S.) was reviewed pursuant to s. 11.61, F.S., and revised and readopted as amended in 1980 by s. 39, ch. 80-238, L.O.F.

The intent of the Regulatory Sunset Act is that "no profession, occupation, business, industry, or other endeavor shall be subject to regulation by the state unless such regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage" Section 11.61 (2)(a), F.S. The criteria to be used in deciding whether to readopt provisions for regulation, pursuant to s. 11.61(6), F.S., are:

1. Whether the absence of regulation would significantly harm or endanger the public health, safety, or welfare.
2. Whether there is a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, or welfare.
3. Whether there is a less restrictive method of regulation available which would adequately protect the public.
4. Whether the regulation has the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree.
5. Whether the increase in cost is more harmful to the public than the harm which would result from the absence of regulation.
6. Whether any facets of the regulatory process are designed for the purpose of, and have as their primary effect, the benefit of the regulated entity.

B. Effect of Proposed Changes:

This bill changes the scheduled repeal of chapters 470 and 497, F.S., pursuant to the Regulatory Sunset Act, from October 1, 1990, to October 1, 1993, which is in accordance with the scheduled repeal date for ch. 639, F.S. This would have the effect of increasing efficiency and consistency by providing review of all three chapters at the same time as they are related in subject matter.

It is important to note that the Regulatory Sunset Act does not prohibit any amendments to existing provisions in the ten years between scheduled reviews. However, by making the changes proposed by this bill, this will mean that ch. 470, F.S., will not have been reviewed pursuant to s. 11.61, F.S., since 1979, and ch. 497, F.S., will not have been reviewed since 1980.

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II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

STORAGE NAME: h 457-f:rr

DATE: July 21, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 457 (identical provisions passed as SB 156)

RELATING TO: Funeral Directing

SPONSOR(S): Representatives Crady and Clements

EFFECTIVE DATE: October 1, 1989

COMPANION BILL(S): SB 156

OTHER COMMITTEES OF REFERENCE: (1)

(2)

I. SUMMARY:

The bill would reschedule Sunset review and repeal of chapter 470, Florida Statutes, relating to funeral directing, embalming, and direct disposition, and chapter 497, Florida Statutes relating to cemeteries and provide an effective date.

A. PRESENT SITUATION:

Sections 470, 497, and 636, Florida Statutes, provide for regulations of funeral directing, embalming and direct disposition of dead human bodies which are necessary to protect the public health, welfare and safety. Currently, the three chapters are to sunset at different times but all regulate the funeral industry. HB 457 would coordinate the sunset reviews of these chapters thus ensuring statutory consistency.

B. EFFECT OF PROPOSED CHANGES:

The bill would provide that chapter 470, Florida Statutes, relating to funeral directing, embalming, and direct disposition, and chapter 497, Florida Statutes, relating to cemeteries, shall be subject to Sunset review and repeal on October 1, 1993, rather than October 1, 1990.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

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2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

III. LONG RANGE CONSEQUENCES:

None.

IV. COMMENTS:

The professional and commercial activity relating to the disposal of

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of dead human bodies is regulated by three departments pursuant to three different chapters of Florida Statutes (chapters 639, 497, and 470, Florida Statutes). Chapter 639, Florida Statutes, underwent significant revisions in the 1988 legislative session and is scheduled for sunset review beginning July 1, 1992, and is repealed effective October 1, 1993. Chapters 470 and 497, Florida Statutes, are scheduled for Sunset review and repeal October 1, 1990. Any Sunset review of these two chapters will have an impact on chapter 639, Florida Statutes, therefore, the review of all three chapters need to be coordinated. HB 457 would coordinate the review and repeal of all three chapters at the same time thereby ensuring statutory consistency.

This bill is consistent with policy statement relative to coordinating governmental efforts which result in governmental efficiency and effectiveness.

V. FINAL ACTIONS:

Similar provisions of HB 457 were passed by the Legislature as SB 156 which was approved by the Governor on May 15, 1989, chapter 89-8, Laws of Florida.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



David Henderson

Staff Director:



Patrick L. "Booter" Imhof

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

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