

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 625 Disposition of Human Remains

SPONSOR(S): Health & Human Services Committee; Community & Military Affairs Subcommittee; Health & Human Services Access Subcommittee; Roberson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	14 Y, 0 N, As CS	Mathieson	Schoolfield
2) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Nelson	Hoagland
3) Health & Human Services Committee	17 Y, 0 N, As CS	Mathieson	Gormley

SUMMARY ANALYSIS

The disposition of human remains in Florida is regulated pursuant to part II, of ch. 406, F.S. This part of the Florida Statutes provides authority to the Anatomical Board of the State of Florida (Board), to collect and distribute human remains for medical education and research.

The CS/CS/HB 625 provides:

- A new definition section;
- Modified procedures for disposition of unclaimed human remains;
- For a funeral director licensed under ch. 497, F.S., to become a legally authorized person, to authorize arterial embalming, and transfer unclaimed remains to the Board, without liability;
- Clarification regarding the transfer of eligible veterans, or spouses or dependents of veterans of the United States Armed Forces, United States Reserve Forces or National Guard, to national cemeteries;
- Authority for boards of county commissioners to develop policies for the final disposition of unclaimed and indigent remains;
- An exemption from approval from the Board to transmit human remains, for a non-transplant anatomical donation organization that has been accredited by the American Association of Tissue Banks.
- For the University of Florida to audit the Board once every three years, or sooner as required, and to report the audit to the Department of Financial Services (DFS).
- For the removal of the sunset provision related to submission of affidavits to the Board by entities accredited by the American Association of Museums;
- That the Board can be a donee of anatomical gifts under ch. 765, F.S.; and
- Repeal of s. 406.54, F.S., related to bodies claimed after delivery to the Board.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regulation of the Conveyance of Anatomical Remains

Part II of ch. 406, F.S., regulates the disposition of dead human bodies in the state of Florida. This chapter provides for the transfer of unclaimed bodies to the state Anatomical Board (Board),¹ and from the Board to Florida medical and dental schools, teaching hospitals, medical institutions and health-related teaching programs that require the use of anatomical material for study.² The Board is authorized to collect fees to defray expenses, can receive additional public or private moneys for expenses, and can reimburse any person who delivers anatomical remains to the Board.³ Additionally, the Board is permitted to contract, and is annually audited by the Department of Financial Services (DFS).⁴

The Board is located at the University of Florida College of Medicine Health Science Center,⁵ and comprised of representatives from the medical schools in the state.⁶ The Board's purpose is to provide cadavers, and parts thereof, to teaching and research programs in Florida. The Board must hold a body for at least 48 hours before it can be used for medical science.⁷

Section 406.56, F.S., provides the Board with the authority to accept a body that has been donated through a will, to be given to a Florida medical or dental school. Such an anatomical gift is provided for in part V, of ch. 765, F.S. These provisions of law outline the specific process for donation, and require that persons who wish to donate their body for transplant or anatomical study memorialize their intent by signing an organ donor card, registering with the online donor database, or completing an advance directive or other document.⁸

The bartering, selling and trading of human remains is prohibited in the state of Florida, punishable by a misdemeanor of the first degree.⁹ Additionally, the transmission or conveyance of such anatomical remains outside the state is a first degree misdemeanor.¹⁰ However, a statutory exception exists for recognized Florida medical or dental schools, which allows these institutions to transfer or convey human remains outside the state for research or other specific purposes.

Human remains may be conveyed into and out of the state, for medical education or research purposes, by a person, institution, or organization that has received prior approval from the Board.¹¹ There is an exception for an entity accredited by the American Association of Museums to convey, in specific circumstances, plastinated anatomical remains into and out of the state for exhibition purposes.¹² This exception sunsets on January 1, 2012.¹³

¹ S. 406.50, F.S.

² The Board is also given the discretionary authority to provide cadavers to recognized associations of licensed embalmers or funeral directors, or the examining boards of medical and dental schools. s. 406.57, F.S.

³ S. 406.58, F.S.

⁴ *Id.*

⁵ S. 406.50, F.S. The anatomical board was created by the Legislature at the University of Florida in 1996, by ch. 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.

⁶ www.med.ufl.edu/anatbd/, site last visited December 12, 2011.

⁷ S. 406.52, F.S.

⁸ S. 765.514, F.S.

⁹ S. 406.61(1), F.S.,

¹⁰ *Id.*

¹¹ *Id.*

¹² S. 406.61(2), F.S.

¹³ S. 406.61(3), F.S.

Nontransplant Anatomical Donation Organizations

An organization that stores human remains for the purposes of research, rather than transplant, is known in the industry as a nontransplant anatomical donation organization. In medical research and education, the donation of human remains is critical to the advancement of new techniques, and nontransplant anatomical donation organizations are a key component of this market.¹⁴

The American Association of Tissue Banks

The American Association of Tissue Banks (AATB) is an organization that promulgates industry standards and accredits tissue banks in both the United States and Canada.¹⁵ Membership is voluntary, and the initial accreditation fee is \$3,000, with an annual fee that is determined by volume and ranges from \$3,250— \$75,000.¹⁶ The AATB requires onsite inspections every three years.¹⁷ Currently, the AATB is developing an accreditation standard for nontransplant anatomical donation organizations that is expected to be completed in January 2012.¹⁸

Effect of Proposed Changes

Section One – Definitions

The CS/CS/ HB 625 creates s. 406.49, F.S., a definition section for part II, of ch. 406, F.S. The bill provides a definition of “unclaimed remains.” Additionally, the bill transfers the definitions of “anatomical board” and “indigent person” from existing sections of ch. 406, F.S., and provides that “cremated remains,” “final disposition,” “human remains,” “remains” and “legally authorized person” have the same meaning as s. 497.005, F.S, the definition section for ch. 497, F.S., the “Florida Funeral, Cemetery, and Consumer Services Act.” Conforming changes are made throughout ch. 406, F.S., to change “disposition” to “final disposition.”

Section Two – Unclaimed Remains Disposition

This section of the bill amends s. 406.50, F.S., directing any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at public expense to notify the Board, unless:

- The remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease;
- A legally authorized person objects to use of the remains for medical education or research; or
- The deceased person was a veteran, or the spouse or dependent child of a veteran of the United States Armed Forces, United States Reserve Forces or National Guard, and eligible for burial in a national cemetery.

The bill removes the notification exception for death by crushing. This is because crushed remains likely have limited utility in an educational setting.

The bill clarifies existing law requiring determination of a veteran’s eligibility for burial in a national cemetery, pursuant to 38 C.F.R. s. 38.620.

¹⁴ See e.g., www.nih.gov/news/health/oct2010/nhgri-07.htm, site last accessed December 20, 2011, regarding a federal grant awarded to understand how genetic variation interacts with disease; www.iiam.org/researcherArticles.php, site last accessed December 20, 2011, the published research page for the International Institute for the Advancement of Medicine, using donated tissue for research.

¹⁵ Founded in 1976, the AATB has produced best practice standards for the operation of tissue banks since 1984. The association also provides an educational network for member organizations to encourage the dissemination of new practices. www.aatb.org/About-AATB, site last visited December 12, 2011.

¹⁶ AATB currently accredits 119 tissue banks in the U.S. and Canada. Email from AATB, on file with the House Health and Human Services Access Subcommittee, December 12, 2011. There are currently 12 organizations in Florida that are accredited by the AATB. www.aatb.org/index.asp?bid=15, site last visited December 12, 2011.

¹⁷ Email from AATB, on file with the House Health and Human Services Access Subcommittee, December 29, 2011.

¹⁸ *Id.*

The bill provides for a funeral director licensed under ch. 497, F.S., to assume the responsibility of a legally authorized person for unclaimed remains, when no family exists or is available. After 24 hours from the time of death, the funeral director may authorize arterial embalming for the purposes of storage and transfer of the unclaimed remains to the Board. The bill releases a funeral director from liability for damages, when acting in accordance with this subsection.

The bill provides that if the identity of the unclaimed remains cannot be ascertained, the remains may not be:

- Cremated;
- Donated as an anatomical gift;
- Buried at sea; or
- Removed from the state.

If the Board does not accept unclaimed remains, the county in which the remains are discovered or where the death occurred is authorized to bury or cremate the entire remains. The bill provides that a board of county commissioners may develop policies and procedures for the final disposition of unclaimed remains by resolution or ordinance.

The bill repeals existing law related to competing claims for the same unclaimed remains by legally authorized persons. Precedence for competing claims to direct disposition of remains is provided for in s. 497.005, F.S, the definition of “legally authorized person.”

Section Three – Disposition of Unclaimed Deceased Veterans

This section of the bill provides conforming changes to include the term “final disposition,” and updates a reference to the federal regulation for burial eligibility in a national cemetery.

Section Four - Retention of Human Remains before Use; Claim after Delivery to Anatomical Board; Procedures for Unclaimed Remains or Remains of Indigent Persons

The bill substantially rewords s. 406.52, F.S., which relates to the retention of human remains, and a process for reclaiming the remains from the Board. The following changes to current law are made:

- Human remains may be embalmed by the Board when received;
- At any point prior to use for medical education or research, a legally authorized person may reclaim the remains from the Board, after payment of the Board’s expenses incurred for transporting, embalming and storing the remains;
- The Board is authorized to reject unclaimed or indigent remains for any reason;
- County boards of commissioners are authorized to, by resolution or ordinance, prescribe policies and procedures for the burial or cremation of the unclaimed remains of an indigent person whose remains are found or whose death occurred in the county; and
- Funeral directors licensed under ch. 497, F.S., are relieved from liability for burying or cremating these remains, at the written direction of a county board of commissioners.

Additionally, the bill deletes a provision requiring a county to make a reasonable effort to accommodate the preference of a relative for either burial or cremation.

Section Five - Unclaimed Remains of Indigent Person; Exemption from Notice to the Anatomical Board

Section 406.53, F.S., also is substantially reworded by the bill. Notification of the Board at the death of an indigent by counties is changed by removing the exceptions for instances where:

- The death was caused by crushing injuries;
- The deceased had a contagious disease;
- A relative claims the body; or
- A friend or representative of a fraternal organization of which the deceased was a member, or a representative of a charitable or a religious organization, or governmental agency which was

providing residential care to the indigent person claims the body for burial and assumes the expense.

The bill adds new exceptions to the requirement for notification of the Board for bodies mutilated by wounds, and for notifications already made and certified by funeral directors, and clarifies that provisions relating to veterans includes the spouse or dependent child of a veteran eligible for burial in a national cemetery.

The bill also removes current law in s. 406.53, F.S., which directs the Department of Health to collect burial fees for remains identified as their clients.¹⁹

Section Six - Contracts for Delivery of Human Remains after Death Prohibited

The bill amends s. 406.55, F.S., changing the word “body” to “human remains” and rewording the existing statute.

Section Seven - Acceptance of Human Remains under Will

Section 406.56, F.S., is amended to change “the advancement of medical science” to “medical education and research” and reword the existing statute.

Section Eight - Distribution of Human Remains

The bill amends s. 406.57, F.S., allowing accredited colleges of mortuary science, rather than recognized associations of licensed embalmers or funeral directors, to be loaned remains for educational or research purposes.

Section Nine - Fees; Authority to Accept Additional Funds; Annual Audit

The bill amends s. 406.58, F.S., to reflect the changes to s. 406.57, F.S., and eliminates associations as a source of fees to be collected by the Board. The bill also limits the Board’s ability to provide reimbursement for the transportation of remains to funeral establishments licensed under ch. 497, F.S.

The bill provides for the University of Florida to audit the Board every three years, or sooner as required, and to send the results of the audit to DFS.

Section Ten - Institutions Receiving Human Remains

This section contains rewording of s. 406.59, F.S., and removes associations from the list of entities allowed to receive human remains.

Section Eleven - Disposition of Human Remains after Use

This section amends s. 406.60, F.S., and allows the disposal of human remains, or any part thereof, by either the Board, or a cinerator facility licensed under ch. 497, F.S., by cremation when such remains are deemed no longer of value to medical or dental education or research.

Section Twelve - Selling, Buying, Bartering, or Conveying Human Remains Outside or Within State Prohibited; Exceptions; Penalty

The bill amends s. 406.61, F.S., providing an exemption from approval from the Board, for a non-transplant anatomical donation organization that has been accredited by the AATB.

The bill provides that for human remains received in this state, either by the anatomical board or a non-transplant anatomical donation organization, must be accompanied by burial transit permit. The

¹⁹ The Department of Health retains the capacity to assess fees for services, subject to s. 402.33, F.S.

remains may not be dissected, disarticulated or segmented until approval has been given by the county medical examiner.

The bill clarifies language related to the prohibition of offering an inducement for anatomical donation. The bill defines valuable consideration, and provides that the definition does not include costs related to cremation, transportation or removal services.

The bill also removes a sunset provision regarding submission of affidavits to the Board by entities accredited by the American Association of Museums.

Section Thirteen - Bodies May be Claimed after Delivery to the Anatomical Board

The bill repeals s. 406.54, F.S., which allowed human remains to be claimed from the Board by friends, members of fraternal, charitable or religious entities, as other provisions of the law provide a process for claiming remains.

Section Fourteen - Donees; Purposes for which Anatomical Gifts May be Made

The Board is added to s. 765.513, F.S., as an entity that can become a donee of anatomical gifts of whole bodies for medical or dental education or research.

Section Fifteen and Sixteen – Final Disposition

The bill provides that anatomical donation is to be final disposition of a body. This would mean that donation is the equivalent of cremating or interring a body.

B. SECTION DIRECTORY:

- Section 1:** Creates s. 406.49, F.S., relating to definitions.
- Section 2:** Amends s. 406.50, F.S., relating to unclaimed remains; disposition, procedure.
- Section 3:** Amends s. 406.51, F.S., relating to final disposition of unclaimed deceased veterans; contract requirements.
- Section 4:** Amends s. 406.52, F.S., relating to retention of human remains before use; claim after delivery to anatomical board; procedures for unclaimed remains of an indigent person.
- Section 5:** Amends s. 406.53, F.S., relating to unclaimed remains of indigent persons; exemption from notice to the anatomical board.
- Section 6:** Amends s. 406.55, F.S., relating to contracts for delivery of human remains after death prohibited.
- Section 7:** Amends s. 406.56, F.S., relating to acceptance of human remains under will.
- Section 8:** Amends s. 406.57, F.S., relating to distribution of human remains.
- Section 9:** Amends s. 406.58, F.S., relating to fees; authority to accept additional funds; annual audit.
- Section 10:** Amends s. 406.59, F.S., relating to institutions receiving human remains.
- Section 11:** Amends s. 406.60, F.S., relating to disposition of human remains after use.
- Section 12:** Amends s. 406.61, F.S., relating to selling, buying, bartering, or conveying human remains outside or within state prohibited; exceptions; penalty.
- Section 13:** Repeals s. 406.54, F.S., relating to claiming of bodies after delivery to anatomical board.
- Section 14:** Amends s. 765.513, F.S., relating to donees; purposes for which anatomical gifts may be made.
- Section 15:** Amends s. 382.002, F.S., relating to definitions.
- Section 16:** Amends s. 497.005, F.S., relating to definitions.
- Section 17:** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or take action requiring expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in aggregate; or 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:

Drafting Issues

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Health & Human Services Access Subcommittee adopted two amendments to HB 625:

Amendment 1 provides that the Board may embalm remains upon receipt.

Amendment 2 provides criteria for the Board to use when evaluating a request to convey remains or specimens:

- Name, physical location and date of the course, conference or seminar, of the facility receiving the remains or specimens received;
- A description and intended use of the remains or specimens;
- The name, physical address and telephone number of the organization or facility supplying the remains or specimens, and the organization handling the transfer;
- Documentation pursuant to s. 406.61(2)(b), F.S., with an exception made for the conveyance of specimens into the state by nontransplant anatomical donation organizations, which may provide an affidavit that states the organization has the donation and consent forms, and that no specimen has been received from a second party;
- An outline of the security measures for maintaining control and safeguarding the remains or specimens; and
- The disposal process for the remains or specimen(s), once the course, conference, seminar or facility has concluded their use.

The amendment also clarifies that an organization must apply three business days prior to conveyance, and the Board has three business days to approve or deny the request. If the Board does not act within three business days, the request is deemed approved. The Board must provide a written statement with a denial.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

On January 31, 2012, the Community & Military Affairs Committee adopted an amendment that postpones the need for nontransplant anatomical donation organizations to be accredited until July 1, 2013.

This analysis reflects the CS/CS/HB 625.

On February 27, 2012, the Health and Human Services Committee adopted an amendment to the bill with two amendments to the amendment. The amendment:

- Provides for UF to audit the Board once every three years, or sooner as required. The results of this audit are to be provided to the Department of Financial Services.
- Requires that human remains are to be accompanied by a burial transit permit.
- Defines monetary inducement for donation, and excludes costs associated with the removal, storage, and transportation of human remains for disposition.
- Provides an exemption from approval from the Board for a non-transplant anatomical donation organization that has been accredited by the American Association of Tissue Banks.
- Provides for anatomical donation to be final disposition.
- Removes the provisions of the bill related to the accreditation of non-transplant anatomical donation organizations, the express prohibition on bartering of human remains, and the documentation and approval process for the board.

The bill was reported favorably as a committee substitute, and the analysis reflects the committee substitute.