

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 956

INTRODUCER: Health Regulation Committee; Regulated Industries Committee; and Senator Hays

SUBJECT: Disposition of Human Remains

DATE: February 27, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Davlanes</u>	<u>Stovall</u>	<u>HR</u>	Fav/CS
3.	<u>Betta</u>	<u>DeLoach</u>	<u>BGA</u>	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill relates to the disposition of human remains. The disposition of human remains in Florida is regulated pursuant to part II, of ch. 406, F.S. The bill:

- Defines several terms to have the same meaning as provided in ch. 497, F.S., which relates to the regulation of funeral, cemetery, and consumer services by the Department of Financial Services (DFS);
- Directs any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at the public expense, to notify the Anatomical Board at the University of Florida Health Science Center (board);
- Authorizes the board to embalm the human remains that it receives;
- Specifies the situations in which notification of the board is not required, including when the unclaimed 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 the use of the remains for medical education or research, or the deceased person was eligible for burial in a national cemetery;
- Permits funeral directors licensed under ch. 497, F.S., to act as a legally authorized person for the unclaimed remains when no family exists or is available, and it releases a funeral director from liability for damages when exercising that authority;

- Provides that, when 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;
- Authorizes counties to dispose of unclaimed remains by burial or cremation pursuant to an ordinance or resolution if the remains are not claimed by the board;
- Clarifies that competing claims for unclaimed remains are prioritized according to the priority of legally authorized persons provided in s. 497.005, F.S.;
- Permits the board to loan remains to accredited colleges of mortuary science for education or research purposes;
- Authorizes the board to pay or reimburse the reasonable expenses, as determined by the board, for the transportation, removal, or storage of unclaimed remains by licensed funeral establishments or removal services;
- Requires the anatomical board, not the DFS, to keep record of related financial transactions and authorizes the University of Florida to audit these records at least once every three years and provide a copy to the DFS;
- Limits the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks (AATB) or are accredited medical or dental schools;
- Provides that nontransplant anatomical donation organizations do not need to be accredited by the AATB before July 1, 2013; and
- Redefines “final disposition” as it relates to vital statistics and the Florida Funeral, Cemetery, and Consumer Services Act, to include provisions relating to anatomical donation.

This bill substantially amends the following sections of the Florida Statutes: 406.50, 406.51, 406.52, 406.53, 406.55, 406.56, 406.57, 406.58, 406.59, 406.60, 406.61, 765.513, 382.002, and 497.005. The bill creates s. 406.49, Florida Statutes, and repeals section 406.54, Florida Statutes.

II. 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 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 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

¹ Section 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. Section 406.57, F.S.

³ Section 406.58, F.S.

⁴ *Id.*

⁵ Section 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.

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 (AAM) 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

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

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

⁷ Section 406.52, F.S.

⁸ Section 765.514, F.S.

⁹ Section 406.61(1), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 406.61(2), F.S.

¹³ Section 406.61(3), F.S.

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.

voluntary, and the initial accreditation fee is \$3,000, with an annual fee that is determined by revenue the bank receives and ranges from \$1,500— \$75,000.¹⁶ Reaccreditation takes place every three years, and onsite inspections are a required component of the process; announced or unannounced inspections may also be conducted more frequently, however.¹⁷ The AATB also has accreditation standards for nontransplant anatomical donation organizations which were developed in January 2012.¹⁸

III. Effect of Proposed Changes:

Section 1 creates s. 406.49, F.S., to define the terms “cremated remains,” “final disposition,” “human remains,” and “legally authorized person” to have the same meaning as provided in ch. 497, F.S., which relates to the regulation of funeral, cemetery, and consumer services by the DFS. The bill transfers the definition of the “anatomical board” from s. 406.50, F.S., to this section. It also transfers the definition of “indigent person” from s. 406.53, F.S., to this section. It defines the term “unclaimed remains” to mean human remains that are not claimed by a legally authorized person, other than a medical examiner or the board of county commissioners, for final disposition at the person’s expense.

Throughout part II of ch. 406, F.S., the bill changes the term “disposition” to “final disposition.”

Section 2 amends s. 406.50, F.S., to direct any person or entity that has possession, charge, or control of unclaimed human remains that will be buried or cremated at the public expense, to notify the board. The bill replaces the more specific terms “all public officers, agents, or employees of every county, city, village, town or municipality and every person in charge of any prison, morgue, hospital, funeral parlor, or mortuary and all other persons” with the general reference to “a person or entity” in relation to the duty imposed by this section. The bill provides that notification of the board is not required when:

- The unclaimed remains are decomposed or mutilated by wounds;
- An autopsy is performed on the remains;
- The remains contain a contagious disease, as provided in current law;
- A legally authorized person objects to the 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 Uniformed Services of the United States or National Guard, and eligible for burial in a national cemetery.

The bill has removed the notification exception for death by crushing.

In current law, s. 406.50(2), F.S., requires the person or entity in charge of the remains to make reasonable efforts to identify the person, contact his or her relatives, and determine if the deceased person is eligible for burial in a national cemetery. The bill defines the term

¹⁶ AATB currently accredits 119 tissue banks in the U.S. and Canada. Email from AATB, on file with Senate Health Regulation Committee. There are currently 13 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 Senate Health Regulation Committee.

¹⁸ *Id.* Currently, four nontransplant anatomical donation organizations have been certified by the AATB, none of which are in Florida.

“reasonable effort” to include contacting the National Cemetery Scheduling Office in addition to contacting the county veterans’ service office, or the regional office of the United States Department of Veterans Affairs.

The bill clarifies s. 406.50(2)(b), F.S., which requires that the person in control or charge of the remains determine a veteran’s eligibility for delivery of the remains or cremated remains to national cemetery, by referencing 38 C.F.R. s. 38.620, which relates to the eligibility for burial in national cemeteries. Current law only references 38 C.F.R.

Section 406.50(3), F.S., provides that a funeral director licensed under ch. 497, F.S., may 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 purpose of storage and delivery of the unclaimed remains to the board. The bill releases a funeral director from liability for damages when acting in accordance with this subsection.

Section 406.50(4), F.S. provides that, if the identity of the unclaimed remains cannot be ascertained, the person or entity in control of them may not:

- Cremate the remains;
- Donate the remains as an anatomical gift;
- Have the remains buried at sea; or
- Remove the remains from the state.

Section 406.50(5), F.S., provides that, if the board does not accept unclaimed remains, the county commission, or its designated department, for the county in which the remains are discovered or where the death occurred, is authorized to dispose of the entire remains.

The bill also authorizes county boards of commissioners to, by ordinance or resolution, develop policies and procedures for the final disposition of unclaimed remains.

The bill repeals the current s. 406.50(4), F.S., which provides that competing claims for unclaimed remains by legally authorized persons for the direct disposition of remains shall be prioritized in accordance with s. 497.005, F.S. However, s. 406.61(2), F.S., provides for the disposition of such competing claims pursuant to s. 765.512, F.S.¹⁹

Section 3 amends s. 406.51, F.S., to replace the term “disposal” with the term “final disposition.” It also cross references 38 C.F.R., s. 38.620 instead of 38 C.F.R.

Section 4 substantially rewords s. 406.52, F.S., which relates to the retention of human remains and the process for reclaiming remains from the board. The bill provides the following changes to current law:

- Subsection (1) authorizes the board to embalm human remains that are received and to reject indigent remains; and

¹⁹ Section 765.512, F.S., provides the priority of persons who are legally authorized to make an anatomical gift; the deceased spouse is first in priority, and a court-appointed representative ad litem is ninth in priority for authorizing such a donation.

- Subsection (2) provides that, at any point prior to the transfer to a medical education or research facility, 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 bill deletes the provisions in s. 406.52, F.S., which:

- Deem county commissioners to be legally authorized persons for the purpose of retention of human remains of indigent persons; and
- Requires the county to take reasonable efforts to accommodate the requests of relatives.

Section 5 substantially rewords s. 406.53, F.S., which specifies the circumstances in which a county is not required to notify the anatomical board. The bill amends the requirement that counties must notify the board upon the death of an indigent to remove the following exceptions:

- The death was caused by crushing injuries;
- The deceased had a contagious disease; and
- The remains were claimed for final disposition at the expense of a friend or representative of a charitable organization or religious entity that the indigent person was a member.

The bill provides a notification exemption for remains that are mutilated by wounds and for notifications of the board already made and certified by funeral directors. The bill also deletes the provision that directs the Department of Health (DOH) to assess burial fees when the DOH collects the remains of a client.²⁰

Section 6 amends s. 406.55, F.S., to replace the term "body" with "human remains" and "person's remains."

Section 7 amends s. 406.56, F.S., to replace the term "bodies" with the term "human remains" and "person's remains." It also replaces the term "medical science" with the term "medical education and research."

Section 8 amends s. 406.57, F.S., to permit the board to loan remains to accredited colleges of mortuary science for education or research purposes. The bill deletes the board's authority to loan remains to recognized associations of licensed embalmers or funeral directors. It also deletes the board's discretion to make such loans and requires that such loans must be made.

Section 9 amends s. 406.58, F.S., to delete the reference to associations in regards to sources from which fees may be collected by the board. It retains the authority of the board to collect fees from institutions. The bill also specifies that the board may pay or reimburse the reasonable expenses, as determined by the board, for the removal, storage, or transportation of unclaimed remains by licensed funeral establishments or removal services. The bill requires the anatomical board, not the DFS, to keep records of related financial transactions and authorizes the University of Florida to audit these records at least once every three years and provide a copy to the DFS.

²⁰ The Department of Health retains the capacity to assess fees for services pursuant s. 402.33, F.S.

Section 10 amends s. 406.59, F.S., to delete the reference to associations as one of the types of entities which may receive human remains from the board.

Section 11 amends s. 406.60, F.S., to provide that the board or a cinerator facility licensed under ch. 497, F.S., may dispose of human remains when such remains are deemed no longer of value to medical or dental education or research.

Section 12 amends s. 406.61(1), F.S., to limit the conveyance of human remains in or out of the state for medical research purposes to nontransplant anatomical donation organizations that are accredited by the American Association of Tissue Banks or accredited medical or dental schools. These organizations need not be accredited until July 1, 2013. The bill also expands the type of medical education or research for which the remains are intended to include dental education or research.

The bill also deletes s. 406.61(3), F.S., which exempted from specified documentation requirements plastinated remains that were displayed before July 1, 2009 by entities accredited by the American Association of Museums. As provided in this subsection, this provision expired on January 1, 2012.

Section 13 repeals s. 406.54, F.S., which permits human remains to be claimed from the board by members of fraternal or religious entities of which the deceased was a member.

Section 14 amends s. 765.513, F.S., which specifies the persons and entities that can make anatomical gifts, to include the board for the purpose of medical or dental education or research.

Section 15 amends s. 382.002, F.S., to redefine “final disposition” as it relates to vital statistics to include provisions relating to anatomical donation. In the case of anatomical donation, such donation is considered final deposition.

Section 16 amends s. 497.005, F.S. to redefine “final disposition” as it relates to Florida Funeral, Cemetery, and Consumer Services Act to include provisions relating to anatomical donation. Any medical institution or entity receiving an anatomical donation assumes responsibility for its disposition after use.

Section 17 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this CS have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the CS have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this CS have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Nontransplant anatomical donation organizations will be required to be accredited by the American Association of Tissue Banks to convey human remains outside and into the state. This will cost each facility required to be accredited. The estimated cost of accreditation is \$3,000 initially, and then between \$1,500 and \$75,000 annually.²¹

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Health Regulation on February 16, 2012:

The CS/CS redefines “final disposition” as it relates to vital statistics and the Florida Funeral, Cemetery, and Consumer Services Act, to include provisions relating to anatomical donation. It allows the anatomical board to pay or reimburse the reasonable expenses, as determined by the board, incurred by a licensed funeral establishment or removal service for the removal, storage, and transportation of unclaimed human remains. It also requires the anatomical board, not the DFS, to keep record of related financial transactions and authorizes the University of Florida to audit these records at least once every three years and provide a copy to the DFS. The CS/CS removes the provision that bartering bodies or conveying bodies within the state are misdemeanors of the first degree and the requirement to submit certain information to the anatomical board before remains may be transferred.

²¹ Email from AATB, on file with Senate Health Regulation Committee.

CS by Regulated Industries on February 7, 2012:

The CS amends s. 406.52(1), F.S., to authorize the board to embalm the human remains that it receives.

The CS amends s. 406.61(2), F.S., to provide that nontransplant anatomical donation organizations need not be accredited by the American Association of Tissue Banks until July 1, 2013. It requires that the anatomical board must be notified at least three days before conveying any human remains instead of at least 72 hours. It provides that, if the third day falls on a weekend or legal holiday, the next business day will be deemed the third business day.

The CS does not create s. 406.61(2)(a), F.S., to authorize the board to establish criteria for granting requests to convey remains. Instead, the CS creates ss. 406.61(2)(a)-(f), F.S., to specify the information that must be provided to the board before a nontransplant anatomical donation organization may convey remains or specimens within the state. Although the required documentation from the legally authorized person was in the bill, s. 406.61(2)(d), F.S., of the CS provides an exception for the required documentation. The exception applies to specimens shipped into the state if an affidavit is submitted by an accredited nontransplant anatomical donation organization stating that the donation organization had donation and consent forms on file for the remains that specifically authorize segmentation or disarticulation of the remains. The affidavit must also state that no specimen that is being shipped into the state was received from a third party.

The CS provides that the board must approve or deny the request to convey the remains within three days of its receipt of the request. If the request is not approved or denied within three days of receipt, it is deemed approved. The CS provides that, if the third day falls on a weekend or legal holiday, the next business day will be deemed the third business day. If the board denies a request, it must provide a written statement of the reasons for the denial.

B. Amendments:

None.