

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 125 Conveyance of Bodies Into or Out of the State
SPONSOR(S): Health Care Regulation Policy Committee; Nehr
TIED BILLS: **IDEN./SIM. BILLS:** SB 414

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Military & Local Affairs Policy Committee</u>	<u>12 Y, 1 N</u>	<u>Nelson</u>	<u>Hoagland</u>
2)	<u>Health Care Regulation Policy Committee</u>	<u>5 Y, 1 N, As CS</u>	<u>Holt</u>	<u>Calamas</u>
3)	<u>Public Safety & Domestic Security Policy Committee</u>	<u></u>	<u></u>	<u></u>
4)	<u>Economic Development & Community Affairs Policy Council</u>	<u></u>	<u></u>	<u></u>
5)	<u>Policy Council</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Florida law makes the sale or purchase, and transmission or conveyance of a body or body parts outside the state (except by a recognized Florida medical or dental school), a misdemeanor of the first degree. Any person, institution or organization that conveys bodies or parts of bodies into or out of the state for medical education or research purposes must notify the University of Florida, Health Science Center's Anatomical Board (board) of their intent and receive approval from the board.

This bill permits entities accredited by the American Association of Museums, and certain science museums, to convey plastinated bodies into or out of the state for exhibition and educational purposes without the consent of the board if the entity or museum:

- Notifies the board regarding the duration and location of the exhibition at least 30 days before the intended conveyance; and,
- Certifies that the entity or museum has no knowledge or reason to believe the plastinated bodies were made available through an unlawful act.

The bill does not have a fiscal impact to the state or local government.

The bill takes effect July 1, 2009.

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

Regulation of the Conveyance of Anatomical Parts

Part V of chapter 765, F.S., regulates anatomical gifts, or gifts of a body or parts of a body after the death of a donor. This law provides specific processes for making anatomical gifts, and requires execution of a donor document, such as a donor card, registration in the online donor registry, an advance directive, or other document.¹ These requirements are in part for the purpose of ensuring donor intent and consent to donate.

Part II of chapter 406, F.S., regulates the disposition of dead bodies. Section 406.61, F.S., makes the sale of a body or body parts a misdemeanor of the first degree. It also makes the transmission or conveyance of a body or body parts to a place outside the state, except by a recognized Florida medical or dental school, a misdemeanor of the first degree. Exceptions are provided for autopsies and for human specimens transported by the Anatomical Board for educational or scientific purposes. Section 406.59, F.S., prohibits universities, colleges, schools, teaching hospitals, "institutions" and "associations" from receiving dead human bodies for any other purpose than the promotion of medical science. "Institutions" and "associations" are not defined; this seems to imply that entities unrelated to education or teaching may receive dead human bodies for the purpose of promoting medical science. However, Section 765.513, F.S., provides that only accredited medical or dental schools, colleges and universities may receive anatomical gifts for the advancement of medical science.

A person, institution or organization that conveys bodies or parts of bodies into or out of the state for medical education or research purposes is required to notify the state Anatomical Board of such intent and receive approval from the board.² The state Anatomical Board ("board") is located at the University of Florida College of Medicine Health Science Center,³ and is comprised of representatives from the various Florida colleges of medicine.⁴ The board's mission is to supply anatomical materials for teaching and research programs in Florida.⁵ Section 406.56, F.S., provides that an individual may

¹ Section 765.514, F.S.

² Section 406.61, F.S.

³ Section 406.50, F.S.

⁴ Anatomical Board of the State of Florida, Letter to the Medical Examiners Commission, (November 19, 2007). Available online at: http://www.fdle.state.fl.us/cjst/mec/nov2007_mec_mtg/Anatomical_Board_Information.pdf (last viewed March 15, 2009).

⁵ University of Florida, College of Medicine, Anatomical Board of the State of Florida: Our Mission. (2004). Available online at: <http://www.med.ufl.edu/anatbd/> (last viewed March 15, 2009).

execute a will donating his or her body to the board, and that the board is empowered to accept the body if the person dies within the geographical limits of the state. The board provides these donated bodies for the training of physicians, dentists, physician assistants, and other health workers, and supports research and continued and advanced training programs for physicians.⁶ When the board approves the conveyance of bodies or body parts into or out of the state for medical education or research purposes, its goal is to ensure the purpose is appropriate, and that a body or any parts were obtained from donors who consented or whose family consented to the use.⁷

Plastination of Bodies

“Plastination” or “polymer preservation” is a technique used to preserve bodies or body parts that was developed in 1977 by Gunther von Hagen.⁸ The water and fat are replaced by certain plastics, yielding specimens that can be touched, do not decay, and retain most microscopic properties of the original sample.⁹ A specimen can be anything from a full human body to a small piece of an animal organ. Once plastinated, specimens and bodies can be manipulated and positioned.¹⁰ Bodies that have been preserved via this method have been used for teaching anatomy for several decades. In recent years, plastinated human bodies and body parts have been featured in museum exhibits.

The board first considered the issue of plasticized bodies in 2005 when it denied the Tampa Museum of Science and Industry (MOSI) a permit to transport body parts into the state for an exhibition entitled “BODIES: The Exhibition.” The board denied the permit because MOSI did not provide any sort of documentation that the decedents whose bodies were to be displayed had actually consented to this use of their remains.¹¹ According to the board, there was significant controversy surrounding the exhibit in other places, with allegations that some of the bodies were Chinese prisoners (political or otherwise), others were executed prisoners, the bodies were paid for, and that any “consents” provided by family members were the product of forgery or coercion.¹²

In a letter to the board, then Florida Attorney General, Charlie Crist, stated that approval of the board was required for such an exhibition, noting that “educational relevance” was listed as one of the purposes of the exhibit on its website.¹³ He noted that while s. 406.61, F.S., specifically refers to “medical education,” the law does not limit that education to medical students.¹⁴ Despite the board’s ruling, MOSI continued with the display. Subsequently, the Attorney General and local law enforcement declined to take action.¹⁵

Presently, the Mary Brogan Museum of Art and Science in Tallahassee is currently hosting a similar exhibit, “OUR BODY...The Universe Within.”¹⁶ The producer of the exhibit indicates on its website that all the anatomical specimens contained in the exhibit originate from China and have been provided for the exhibit in a manner “consistent with the laws of China.” Staff was unable to determine the

⁶ *Ibid.*

⁷ February 9, 2009, e-mail from Susan Collingwood, Senior University Counsel for Health Affairs, University of Florida, on file with the Military & Local Affairs Policy Committee staff.

⁸ Gunther von Hagen’s, *Body Worlds: The Original Exhibition of Real Human Bodies, The Idea behind Plastination*. Available online at: http://www.bodyworlds.com/en/plastination/idea_plastination.html (last viewed March 15, 2009).

⁹ Gunther von Hagen’s, *Body Worlds: The Original Exhibition of Real Human Bodies, The Method of Plastination*. Available online at: http://www.bodyworlds.com/en/plastination/method_plastination.html (last viewed March 15, 2009).

¹⁰ Gunther von Hagen’s, *Body Worlds: The Original Exhibition of Real Human Bodies, The Plastination Process*. (2007). Available online at: http://www.bodyworlds.com/en/plastination/plastination_process.html (last viewed March 15, 2009).

¹¹ February 9, 2009, e-mail from Susan Collingwood, Senior University Counsel for Health Affairs, University of Florida on file with the Military & Local Affairs Policy Committee staff.

¹² *Ibid.*

¹³ Letter from Attorney General Charlie Crist to Executive Director, Anatomical Board. Available online at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-6F7N6S/\\$file/romrell.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-6F7N6S/$file/romrell.pdf) (last viewed March 15, 2009).

¹⁴ Office of the Attorney General of Florida, Charlie Crist, News Release: *Crist Responds to Florida Anatomical Board* (August 2005). Available online at:

<http://myfloridalegal.com/852562220065EE67.nsf/0/86A1D427312C3F8F8525705B0060F0F6?Open&Highlight=0.bodies.the.exhibit> on (last viewed March 15, 2009).

¹⁵ February 5, 2009, e-mail from Susan Collingwood, Senior University Counsel for Health Affairs, University of Florida, noting that the board itself does not have enforcement powers is on file with the Military & Local Affairs Policy Committee staff.

¹⁶ The Mary Brogan Museum of Art and Science: *Our Body...the Universe Within*. Available online at: <http://www.thebrogan.org/> (last viewed March 15, 2009).

requirements of Chinese law related to anatomical gifts and consent. The anatomical specimens are not owned by the exhibitor, but are provided by a Chinese foundation. While the producer does not have the specific identity of each anatomical specimen, it maintains that the bodies have been donated through medical schools and other research facilities in China to promote education, science and medical research.¹⁷

The American Association of Museums

The mission of the American Association of Museums (AAM) “is to enhance the value of museums to their communities through leadership, advocacy and service.”¹⁸ According to the AAM’s website, it is the only organization representing the entire scope of museums and professionals and nonpaid staff who work for and with museums. It currently represents more than 15,000 individual museum professionals and volunteers; 3,000 institutions; and 300 corporate members. Individual members span the range of museum occupations, including directors, curators, registrars, educators, exhibit designers, public relations officers, development officers, security managers, trustees and volunteers. Every type of museum is represented including art, history, science, military and maritime, and youth museums, as well as aquariums, zoos, botanical gardens, arboretums, historic sites, and science and technology centers.¹⁹

Through its Accreditation Commission, the AAM evaluates museums for accreditation based on program standards and requirements. To participate in the AAM Accreditation Program, a museum must:²⁰

- be a legally organized nonprofit institution or part of a nonprofit organization or government entity;
- be essentially educational in nature;
- have a formally stated and approved mission;
- use and interpret objects and/or a site for the public presentation of regularly scheduled programs and exhibits;
- have a formal and appropriate program of documentation, care, and use of collections and/or objects;
- carry out the above functions primarily at a physical facility/site;
- have been open to the public for at least two years;
- be open to the public at least 1,000 hours a year;
- have accessioned 80 percent of its permanent collection;
- have at least one paid professional staff with museum knowledge and experience;
- have a full-time director to whom authority is delegated for day-to-day operations;
- have the financial resources sufficient to operate effectively; and
- demonstrate it meets the “Characteristics of an Accreditable Museum.”

In the state of Florida, the AAM has accredited the following entities:²¹

- Bass Museum of Art (Miami Beach);
- Boca Raton Museum of Art;
- Bonnet House Museum & Gardens (Ft. Lauderdale);
- Cummer Museum of Art and Gardens (Jacksonville);
- Fairchild Tropical Botanic Garden (Miami);
- Florida Holocaust Museum (St. Petersburg);
- Florida Museum of Natural History at the University of Florida;
- Florida State University Museum of Fine Arts;

¹⁷ The Mary Brogan Museum of Art and Science, More Information on Our Body: Our Body Frequently Asked Questions. Available online at: http://www.thebrogan.org/index.php?option=com_content&task=view&id=132&Itemid=119 (last viewed March 15, 2009).

¹⁸ American Association of Museums: About AAM. Available online at: <http://www.aam-us.org/aboutaam/index.cfm> (last viewed March 15, 2009).

¹⁹ *Ibid.*

²⁰ American Association of Museums, About Museums: Accredited Museums. Available online at: <http://www.aam-us.org/museumresources/accred/standards.cfm> (last viewed March 15, 2009).

²¹ *Ibid.*

- Frost Art Museum at Florida International University;
- George D. and Harriet W. Cornell Fine Arts Museum at Rollins College (Winter Park);
- Henry B. Plant Museum (Tampa);
- Henry Morrison Flagler Museum (Palm Beach);
- Historic Spanish Point Gulf Coast Heritage Association (Osprey);
- Historical Museum of Southern Florida (Miami);
- Jewish Museum of Florida (Miami Beach);
- John and Mable Ringling Museum of Art (Sarasota);
- Lowe Art Museum University of Miami (Coral Gables);
- Marie Selby Botanical Gardens (Sarasota);
- Mel Fisher Maritime Heritage Society (Key West);
- Miami Art Museum;
- Miami Museum of Science ;
- Morikami Museum and Japanese Gardens (Delray Beach);
- Museum of Art (Ft. Lauderdale);
- Museum of Arts & Sciences (Daytona Beach);
- Museum of Contemporary Art (North Miami);
- Museum of Discovery and Science (Ft. Lauderdale);
- Museum of Fine Arts (St. Petersburg);
- Museum of Florida History (Tallahassee);
- Museum of Science & History of Jacksonville;
- Museum of Science & Industry (Tampa);
- National Museum of Naval Aviation U.S. Dept of the Navy (Pensacola);
- Norton Museum of Art (West Palm Beach);
- Orange County Regional History Center (Orlando);
- Orlando Museum of Art;
- Orlando Science Center;
- Pensacola Museum of Art;
- Polk Museum of Art (Lakeland);
- Salvador Dali Museum (St. Petersburg);
- Samuel P. Harn Museum of Art at the University of Florida;
- Society of the Four Arts (Palm Beach);
- Tallahassee Museum of History and Natural Science;
- Tampa Museum of Art;
- University of South Florida Contemporary Art Museum;
- Vero Beach Museum of Art; and
- Vizcaya Museum and Gardens (Miami).
- Wolfsonian-FIU at Florida International University;

The Mary Brogan Museum of Art and Science in Tallahassee is not accredited by the AAM.

Science Museums and the Cultural Endowment Program

Section 265.608, F.S., defines a science museum for the purpose of eligibility for grants from the Cultural Institutions Trust Fund within the Division of Cultural Affairs of the Department of State. A science museum is “a public or private nonprofit institution located in this state operating on a permanent basis for the primary purpose of sponsoring, producing, and exhibiting programs for the observation and study of various types of natural science and science technology.” For grant purposes, a science museum must be a not-for-profit organization under s. 501(c)3 of the Internal Revenue Code, and must be open to the public and have a full-time staff.²²

²² Section 265.608(3), F.S.

The Department of State administers the Cultural Endowment Program, a matching grant program for local cultural organizations in Florida.²³ To be eligible for Program grants, a local sponsoring organization must be designated as a “cultural sponsoring organization” pursuant to s. 265.285, F.S., among other things.²⁴ A “cultural sponsoring organization” is²⁵:

- A not-for-profit entity pursuant to s. 501(c)(3) or (4) of the Internal Revenue Code of 1954 and a corporation not for profit incorporated pursuant to chapter 617;
- Described in, and allowed to receive contributions pursuant to, the provisions of s. 170 of the Internal Revenue Code of 1954; and
- Responsible for conducting, creating, producing, presenting, staging, or sponsoring a cultural exhibit, performance, or event.

A cultural sponsoring organization receives that designation from the Department of State, as recommended by the Florida Arts Council.²⁶

Effect of Proposed Changes

HB 125 amends s. 406.61, F.S., to permit certain entities to convey plastinated bodies or parts of bodies into or out of the state for exhibition and educational purposes without the consent of the Florida Anatomical Board. Only entities accredited by the American Association of Museums, and science museums defined in s. 265.608, F.S. that are designated cultural sponsoring organizations pursuant to the Cultural Endowment Program, qualify for this exemption.

Qualified entities and museums may convey plastinated bodies or parts of bodies in and out of the state without the consent of the Florida Anatomical Board if:

- The organization notifies the board regarding the duration and location of the exhibition at least 30 days before the intended conveyance; and
- The organization certifies in writing that it has no knowledge or reason to believe the bodies or parts of bodies were made available through an unlawful act.

It is unclear to whom the organization makes this certification. It is unclear what would constitute an “unlawful act” or what law would apply in making such a determination – Florida law, or the laws applicable in the bodies’ state or country of origin. The bill does not specify what law applies.

The bill also makes some stylistic grammatical changes to s. 406.61, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 406.61, F.S., relating to the conveyance of bodies.

Section 2: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²³ Sections 265.601-265.606, F.S.

²⁴ Section 265.606, F.S.

²⁵ Section 265.603, F.S.

²⁶ Section 265.606 and 265.285, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Qualified entities and museums may convey plastinated bodies or parts of bodies in and out of the state without the consent of the Florida Anatomical Board if the organization certifies in writing that it has no knowledge or reason to believe the bodies or parts of bodies were made available through an unlawful act. It is unclear to whom the organization makes this certification. It is also unclear what would constitute an "unlawful act" or what law would apply in making such a determination – Florida law, or the laws applicable in the bodies' state or country of origin. The bill does not specify what law applies.

Other Comments

Florida Association of Museums

The Florida Association of Museums has not taken a position on the bill.²⁷

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

At its meeting on March 4, 2009, the Military & Local Affairs Policy Committee adopted an amendment which makes technical changes to the bill, and imposes an additional requirement that an accredited entity provide the Anatomical Board with documentation that bodies were legally donated for the purpose of plastination.

²⁷ February 6, 2009, e-mail from Malinda J. Horton, Executive Director, Florida Association of Museums on file with the Military & Local Affairs Policy Committee staff.

At its meeting on March 18, 2009, the Health Regulation Policy Committee adopted one amendment and reported the bill favorably. The amendment authorizes certain entities to convey plastinated bodies for certain purposes without the consent of the Anatomical Board if the entity:

- Provides certain notice to the board; and,
- Certifies that the entity has no knowledge or reason to believe the plastinated bodies were made available through an unlawful act.

The analysis is drafted to the committee substitute.