

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 Regulated Industries Committee

BILL: CS/SB 956

INTRODUCER: Regulated Industries Committee and Senator Hays

SUBJECT: Disposition of Human Remains

DATE: February 7, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	_____	_____	HR	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

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 Service 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 the reasonable expenses, as determined by the board, for the transporting of unclaimed remains by licensed funeral establishments;
- Expands the prohibition against selling buying or conveying human remains outside the state to also prohibit bartering human remains or any parts thereof;
- 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;
- Requires nontransplant anatomical donation organizations to notify the board at least three days before conveying any human remains, and prohibits the transporting of the remains without the board's approval;
- Specifies the information and documentation that must be provided to the board by nontransplant anatomical donation organizations;
- Requires 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;
- For the three-day notice requirement and the three-day approval process, the bill 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 bill provides an effective date of July 1, 2012.

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

II. Present Situation:

Disposition of Dead Human Bodies

Part II, of ch. 406, F.S., provides for the disposition of unclaimed dead human bodies and dead human bodies that must be buried or cremated at public expense. Such bodies must be

transferred to the Anatomical Board (board),¹ and then distributed by 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 has discretionary authority to provide cadavers to recognized associations of licensed embalmers or funeral directors, or the examining boards of medical and dental schools.³ The board is authorized to collect fees to defray expenses, to receive additional public or private moneys for expenses, and to reimburse any person who delivers anatomical remains to them.⁴ In addition, the board must be audited each year by the Department of Financial Services (DFS).⁵

The board is located at the University of Florida's College of Medicine, Health Science Center.⁶ The board is comprised of representatives from the medical schools in this state.⁷ The board's purpose is to provide cadavers and human body parts to teaching and research programs in Florida. The board must hold a body for at least 48 hours in receiving vaults before it can be used for medical science.⁸

Section 406.56, F.S., authorizes the board to accept a body that has been donated to it through a will for the advancement of medical science. The person must have died within the state. Such anatomical gifts are provided for in part V, of ch. 765, F.S., which outlines the process for the donation of anatomical gifts. A person who wishes to donate their body for transplant or anatomical study must memorialize their intent by signing an organ donor card, registering with the online donor database, on his or her driver's license or identification card, or in an living will or other advance directive.⁹

The selling or buying of human remains is prohibited in the state of Florida, punishable by a misdemeanor of the first degree, punishable as provided in ss. 775.082 and 775.083, F.S.¹⁰ The transmission or conveyance of dead human remains outside the state is also a misdemeanor of the first degree.¹¹ There is an exception for recognized Florida medical or dental schools to permit the transfer or conveyance of human remains outside the state for research or other scientific 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.¹² There is also an exception for an entity that is accredited by the American Association

¹ Section 406.50, F.S.

² Section 406.57, F.S.

³ *Id.*

⁴ Section 406.58, F.S.

⁵ *Id.*

⁶ 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. See also the internet site for the Anatomical Board of the State of Florida located at: www.med.ufl.edu/anatbd/ (Last visited January 31, 2012).

⁷ *Id.*

⁸ Section 406.52, F.S.

⁹ Section 765.514, F.S.

¹⁰ Section 406.61(1), F.S. Section 775.082, F.S., provides that the penalty for misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 1 year. Section 775.083, F.S. provides that the penalty for misdemeanor of the second degree is punishable by a fine not to exceed \$1,000.

¹¹ *Id.*

¹² *Id.*

of Museums (AAM) to convey plastinated anatomical remains into and out of the state for exhibition purposes.¹³ This exception expired on January 1, 2012.¹⁴

Nontransplant Anatomical Donation Organizations

An organization that stores human remains for the purposes of research, rather than transplant is known as a non-transplant anatomical donation organization. The American Association of Tissue Banks (AATB) is a professional, non-profit, scientific and educational organization that promulgates industry standards and accredits tissue banks in both the United States and Canada.¹⁵

The AATB provides standards for organizations (tissue banks) that provide human anatomical material used for human transplant and tissue banks that provide human anatomical material for non-transplant purposes. The AATB nontransplant standards were adopted in January 2012. According to a representative for the AATB, tissue banks that are accredited under the AATB's transplant standards are qualified to accept human remains for non-transplant purposes but will receive a separate accreditation under the AATB's new non-transplant standards. According to the AATB, there are currently four accredited tissue banks in Florida. There are no non-transplant tissue banks that have received nontransplant accreditation.

A representative for the AATB stated that the association's time-frame for the accreditation lasts no more than nine months and that the typical accreditation process can be completed within six months. The time required to complete the accreditation process is dependent on the number of accreditation applications that the association receives and the specific facts regarding the applicant. Accreditation requires a \$5,000 application fee. Applicants perform a self audit based on the association's accreditation standards before the commencement of the process. They are then audited by an independent auditor. Once accredited, the association can inspect the tissue bank at any time. Accredited tissue banks must also pay an annual maintenance fee that varies from \$1,500 to \$75,000 depending on the tissue banks annual revenue.

According to a representative for a non-transplant anatomical donation organization, the organization's practice is to not assess a fee for a nontransplant anatomical donation. It also pays for the cremation of the deceased person whose remains are donated to the organization. In contrast, donations to the board are subject to fees that are paid by the deceased's next-of-kin or estate. The relatives or estate must pay for all funeral home expenses, including the preliminary embalming and transportation to the University of Florida or the University of Miami, School of Medicine. The actual costs for these services are determined by individual funeral homes, crematories or mortuaries.¹⁶ The representative for the non-transplant anatomical donation organization advised that the typical cost of a donation to the board is approximately \$2,000.

¹³ Section 406.61(2), F.S.

¹⁴ Section 406.61(3), F.S.

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 practice. www.aatb.org/About (Last visited February 3, 2012).

¹⁶ See Anatomical Board of the State of Florida, *Commonly Asked Questions* at: <http://www.med.ufl.edu/anatbd/quest.html> (Last visited February 3, 2012).

III. Effect of Proposed Changes:

Definitions

The bill 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 Department of Financial Services (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.”

Unclaimed Remains Disposition

The bill 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 “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.¹⁷

Final Disposition of Unclaimed Deceased Veterans

The bill substantially rewords 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.

Retention of Human Remains and Process for Unclaimed Remains or Remains of an Indigent Person

The bill 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
- Subsection (2) provides that, at any point prior to the transfer to 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.

¹⁷ Section 765.512, F.S., provides the priority of persons who are legally authorize to may make an anatomical gift with the deceased spouse being first in priority and with a court appointed representative ad litem as the ninth potential person who may authorize the donation.

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.

Notice to the Anatomical Board

The bill 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.¹⁸

Contracts for Delivery of Human Remains after Death Prohibited

The bill amends s. 406.55, F.S., to replace the term “body” to “person’s remains.”

Acceptance of Human Remains under Will

The bill 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.”

Distribution of Human Remains

The bill 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.

Fees; Authority to Accept Additional Funds; Annual Audit

The bill 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 the reasonable expenses, as determined by the board, for the transporting of unclaimed by licensed funeral establishments.

Institutions Receiving Human Remains

The bill 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.

Disposition of Human Remains after Use

¹⁸ The Department of Health retains the capacity to assess fees for services pursuant s. 402.33, F.S.

The bill 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.

Selling, Buying, Bartering, or Conveying Human Remains Outside or within the State Prohibited; Exceptions; Penalty

The bill amends s. 406.61(1), F.S., to expand the prohibition against selling, buying, or conveying human remains outside the state to also prohibit bartering¹⁹ human remains or any parts thereof. It also expands the provision that the board is not prohibited from transporting human remains outside the state to include the transporting of remains within the state. It is not clear whether this prohibition against bartering would prohibit nontransplant anatomical donation organizations from paying the costs of funeral and cremation services for the remains that are donated to these organizations.

Section 406.61(2), F.S., 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 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.

Section 406.61(2), F.S., requires nontransplant anatomical donation organizations to notify the board at least three days before conveying any human remains, and receive the approval of the board before remains are conveyed. The bill 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 bill specifies that the following information must be included in the request to the anatomical board:

- Identifying information about the organization or facility receiving the remains or specimens;
- Description of the intended use of the remains or specimens;
- Identifying information of the organization or facility supplying specimens and handling the transfer of the remains or specimens;
- Documentation that the anatomical donation received the consent of a legally authorized person to make such a donation, as specified in s. 765.512, F.S.;²⁰
- Outline of the security measures at the organization or facility before, during, and after the course, conference, or seminar for maintaining control and safeguarding the specimens; and
- Procedures for disposal of the remains or specimens after the conclusion of the course, conference, or seminar, including identifying information for the entity performing the cremation.

¹⁹ Barter is defined as to trade or exchange one commodity for another. <http://www.merriam-webster.com> (Last visited February 4, 2012).

²⁰ *Supra* n. 17.

Regarding the documentation of consent, if the remains are to be segmented or disarticulated, the legally authorized person's consent must be specific consent and must describe any part of the remains that is to be segmented or disarticulated. The bill provides an exception for 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 board must approve or deny the request to convey the remains within 3 days of its receipt of the request. If the request is not approved or denied within 3 days of receipt, it is deemed approved. As with the three-day notice requirement, the bill 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 organization must receive the board's approval before it can convey the remains. If the board denies a request, it must provide a written statement of the reasons for the denial.

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.

Bodies may be Claimed after Delivery to the Anatomical Board

The bill 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.

Donees; Purposes for which Anatomical Gifts may be made

The bill 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.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill amends s. 406.61(1), F.S., to expand the prohibition against selling, buying, or conveying human remains outside the state to also prohibit bartering human remains or any parts thereof. It is not clear whether this prohibition against bartering would prohibit nontransplant anatomical donation organizations from paying the costs of the funeral and cremation services for the remains that are donated to these organizations.

A law may violate the Due Process Clause of the U.S. Constitution if it fails to give persons fair notice as to what is prohibited. The statute must clearly delineate prohibited conduct so that persons of ordinary intelligence are not forced to guess about the statute's meaning or application. If the statute fails to provide such notice, it violates the void for vagueness doctrine.²¹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Nontransplant anatomical donation organizations that are not currently accredited by the American Association of Tissue Banks would be required to obtain that accreditation to continue to provide their service within the state. The cost of the accreditation is a \$5,000 application fee and an annual maintenance fee that varies from \$1,500 to \$75,000 depending on the organization's annual revenue. There may be other indeterminate costs for these organizations associated with compliance with the notification and reporting requirements in the bill.

The relatives or other legally authorized person of a deceased person may be required to assume the costs of funeral and cremation services if they donate the remains to a nontransplant anatomical donation organization if the bill's prohibition against the bartering of human remains is applied to prohibit these organizations from paying these expenses. The typical cost for these services to the relatives or other authorized persons for an anatomical donation to the board is \$2,000. Currently, these organizations assume this cost for the remains that are donated to them.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

²¹ *Connally v. General Constr. Co.*, 269 U.S. 385 (1926).

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.)

None.

B. Amendments:**CS by Regulated Industries on February 7, 2012:**

The committee substitute (CS) amends s. 406.52(1), F.S., to authorize the Anatomical Board (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 3 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 3 days of its receipt of the request. If the request is not approved or denied within 3 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.