

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 171	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Health Quality Subcommittee; Rooney and others	115 Y's	0 N's
<b>COMPANION BILLS:</b>	(CS/SB 370)	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 171 passed the House on March 13, 2013, and subsequently passed the Senate on April 30, 2013. The bill revises the procedures for the reporting, distribution, retention, and cremation of human remains for medical education and research, by a funeral director, a local government, the Anatomical Board of the State of Florida (board), or a non-transplant anatomical donation organization. The bill specifically amends chapter 382, part II of chapter 406, and chapter 497, F.S., to provide:

- Revised procedures for registration of certificates of death and medical certification of causes of death;
- Modified procedures for reporting and disposing of unclaimed human remains;
- For a funeral director licensed under chapter 497, F.S., to become a legally authorized person to authorize arterial embalming and transfer unclaimed human remains to the board, without liability;
- Clarification regarding the transfer of eligible veterans, or spouses or dependents of veterans of the U.S. Armed Forces, U.S. Reserve Forces or National Guard, to national cemeteries;
- Authority for boards of county commissions to develop policies for the final disposition of unclaimed and indigent human remains;
- To a non-transplant anatomical donation organization that has been accredited by the American Association of Tissue Banks (AATB) an exemption from the requirement to obtain approval from the board to transmit human remains;
- That non-transplant anatomical donation organizations be AATB-accredited by October 1, 2014;
- 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;
- For the removal of the sunset provision related to submission of affidavits to the board by entities accredited by the American Association of Museums;
- For the written consent from an authorized person representing the decedent before the human remains may be dissected, disarticulated, or segmented;
- That the board and a non-transplant anatomical donation organization can be donees of anatomical gifts under chapter 765, F.S.;
- Modified procedures for handling of cremated human remains of a veteran;
- For the repeal of s. 406.54, F.S., related to bodies claimed after delivery to the board; and
- Numerous new definitions and conforming changes to chapters 406 and 497, F.S.

The bill has an insignificant, negative fiscal impact to the state and no fiscal impact to local governments.

The bill was approved by the Governor on June 7, 2013, ch. 2013-138, L.O.F., and will become effective on July 1, 2013.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### PRESENT SITUATION

##### Office of Vital Statistics

The Florida Vital Statistics Act authorizes the Department of Health (DOH) to establish an Office of Vital Statistics (Office), which is responsible for the uniform and efficient registration, compilation, storage, and preservation of all vital records<sup>1</sup> in Florida.<sup>2</sup> The Office is required to:

- Uniformly enforce the law throughout the state.
- Establish registration districts throughout the state, which districts may be consolidated or subdivided to facilitate registration.
- Appoint a local registrar of vital statistics for each registration district in the state.
- Procure the complete registration of all vital records in each registration district and in the Office.
- Investigate cases of irregularity or violation of law and, when necessary, report cases of violations to the state attorney in the registration district in which the violation occurs.
- Approve all forms used in registering, recording, certifying, and preserving vital records.
- Prepare and publish an annual report of vital statistics.
- Appoint one or more suitable persons to act as subregistrars, who are authorized to receive death certificates and fetal death certificates and to issue burial permits.
- Accept, use, and produce all records, reports, and documents necessary in paper or electronic form, and adopt and enforce all rules necessary for the acceptance, use, production, issuance, recording, maintenance, and processing of such records, reports, and documents.
- By rule require that forms, documents, and information submitted to DOH in the creation or amendment of a vital record be under oath.

##### Death Certificates

Section 382.008, F.S., sets forth the requirements for certificates of death. A certificate of death is required to be filed within 5 days of the death and prior to final disposition with the local registrar of the district in which the death occurred so the death may be recorded. Final disposition means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body.<sup>3</sup>

Furthermore, the funeral director<sup>4</sup> who first assumes custody of a dead body is required to file the certificate of death. In the absence of the funeral director, the physician or other person in attendance at or after the death is required to file the certificate of death or fetal death. The physician must, within 72 hours after receipt of a death, certify the cause of death and make the certification available to the funeral director. The medical certification is completed by the physician in charge of the decedent's care for the illness or condition which resulted in death, the physician in attendance at the time of death or immediately before or after such death, or the medical examiner if cause of death determination is required.<sup>5</sup>

##### Medical Examiners and Death Investigations

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<sup>1</sup> "Vital records" or "records" are certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, or name change. See s. 382.002(16), F.S.

<sup>2</sup> Section 382.003, F.S.

<sup>3</sup> Section 382.002(8), F.S. A "dead body" is defined as a human body or such parts of a human body from the condition of which it reasonably may be concluded that death recently occurred. See section 382.002(4), F.S.

<sup>4</sup> "Funeral director" is a licensed funeral director or direct disposer licensed pursuant to chapter 497, F.S., or other person who first assumes custody of or effects the final disposition of a dead body. See section 382.002(9), F.S.

<sup>5</sup> Section 382.011, F.S.

Section 406.11, F.S., governs when a medical examiner must investigate the circumstances involving the death of a human being. The medical examiner of the district in which the death occurred or the body was found is required to determine the cause of death and is required to perform such examinations, investigations, and autopsies as he or she shall deem necessary or as requested by the state attorney; when any person dies in the state:

- Of criminal violence;
- By accident;
- By suicide;
- Suddenly, when in apparent good health;
- Unattended by a practicing physician or other recognized practitioner;
- In any prison or penal institution;
- In police custody;
- In any suspicious or unusual circumstance;
- By criminal abortion;
- By poison;
- By disease constituting a threat to public health; or,
- By disease, injury, or toxic agent resulting from employment.

### **Conveyance of Anatomical Human Remains**

Section 382.006, F.S., requires the funeral director who first assumes custody of a dead body to obtain a burial-transit permit prior to final disposition and within 5 days after death. The application for a burial-transit permit must be signed by the funeral director and include the funeral director's license number. The funeral director is required to attest on the application that he or she has contacted the physician's or medical examiner's office and has received assurance that the physician or medical examiner will provide medical certification of the cause of death within 72 hours after receipt of the death certificate from the funeral director.

A burial-transit permit is issued by the local vital statistics registrar or subregistrar of the registration district in which the death occurred or the body was found. The burial-transit permit is required to accompany the body to the place of final disposition. If the body is transported outside the state, the permit is required to accompany the dead body to its destination.<sup>6</sup>

### **State Anatomical Board**

Part II of chapter 406, F.S., provides for the transfer of unclaimed bodies to the state Anatomical Board (board),<sup>7</sup> 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.<sup>8</sup> 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 human remains to the board.<sup>9</sup> Additionally, the board is annually audited by the Department of Financial Services (DFS).<sup>10</sup>

The board is located at the University of Florida College of Medicine Health Science Center,<sup>11</sup> and comprised of representatives from the medical schools in the state.<sup>12</sup> The board's purpose is to provide

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<sup>6</sup> Section 382.006(4), F.S.

<sup>7</sup> Section 406.50, F.S.

<sup>8</sup> 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. See section 406.57, F.S.

<sup>9</sup> Section 406.58, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 406.50, F.S. The anatomical board was created by the Legislature at the University of Florida in 1996, by chapter 96-251, L.O.F. Prior to 1996, the Division of Universities of the Department of Education was responsible for these functions.

<sup>12</sup> Anatomical Board of the State of Florida, [www.med.ufl.edu/anatbd/](http://www.med.ufl.edu/anatbd/), last visited May 9, 2013.

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.<sup>13</sup>

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 chapter 765, F.S. These provisions of law outline the specific process for donation, and require that persons who wish to donate their bodies 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.<sup>14</sup>

The selling and trading of human remains is prohibited in Florida, punishable by a misdemeanor of the first degree.<sup>15</sup> Additionally, the transmission or conveyance of such anatomical human remains outside the state is a first degree misdemeanor.<sup>16</sup> 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.<sup>17</sup>

### **The American Association of Tissue Banks and Accreditation**

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.<sup>18</sup> 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 to \$75,000.<sup>19</sup> The AATB requires onsite inspections every three years.<sup>20</sup> In January 2012, the AATB developed an accreditation standard for Non-transplant Anatomical Donation Organizations (NADO).<sup>21</sup> A NADO stores human remains for the purposes of research, rather than transplant.

According to the AATB, an accredited NADO facilitates a Non-Transplant Anatomical Donation (NTAD) by overseeing referrals, obtaining informed consent or authorization, acquisition, traceability, transport, assessing donor acceptability, preparation, packaging, labeling, storage, release, evaluating intended use, distribution, and final disposition of an NTAD. As of February 2013, the AATB has accredited five NADOs in the U.S. and of these, only one is located in Florida.<sup>22</sup> In medical research and education, the donation of human remains is critical to the advancement of new techniques, and NADOs are a key component of this market.<sup>23</sup>

## **EFFECT OF PROPOSED CHANGES**

### **Disposition of Human Remains**

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<sup>13</sup> Section 406.52, F.S.

<sup>14</sup> Section 765.514, F.S.

<sup>15</sup> Section 406.61(1), F.S. A first degree misdemeanor is punishable by a fine not exceeding \$1,000 or imprisonment not exceeding 1 year. Sections 775.083 and 775.082, F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 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. AATB, *About Us*, [www.aatb.org/About-AATB](http://www.aatb.org/About-AATB), last visited May 9, 2013.

<sup>19</sup> AATB currently accredits 127 tissue banks in the U.S. There are currently 14 organizations in Florida that are accredited by the AATB. AATB, *Accredited Bank Search*, <http://www.aatb.org/index.asp?bid=15>, last visited May 9, 2013.

<sup>20</sup> AATB, *Accreditation Policies for Transplant Tissue Banks*, [www.aatb.org/Accreditation-Policies](http://www.aatb.org/Accreditation-Policies), last visited May 9, 2013.

<sup>21</sup> *Id.*

<sup>22</sup> *Supra* at note 20.

<sup>23</sup> See e.g., National Institutes of Health, "NIH launches Genotype-Tissue Expression project," [www.nih.gov/news/health/oct2010/nhgri-07.htm](http://www.nih.gov/news/health/oct2010/nhgri-07.htm), last visited May 9, 2013, regarding a federal grant awarded to understand how genetic variation interacts with disease. See also, International Institute for the Advancement of Medicine, *Researcher Articles*, [www.iiam.org/researcherArticles.php](http://www.iiam.org/researcherArticles.php), last visited May 9, 2013, references the use of donated tissue for research.

The bill provides that a reasonable effort must be made to identify the human remains of a deceased person before final disposition may occur. If the identity is not known, the human remains may not be:

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

However, the bill authorizes counties in which the human remains are discovered or where deaths occur to bury or cremate unclaimed human remains, if the board does not accept the unclaimed remains. County boards of commissioners are authorized to, by resolution or ordinance, prescribe policies and procedures for the burial or cremation of the unclaimed human remains of an indigent person whose remains are found or whose death occurred in the county.

The bill authorizes a funeral director licensed under ch. 497, F.S., to assume the responsibility of a legally authorized person for unclaimed human 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 human remains to the board. Funeral directors licensed under ch. 497, F.S., are relieved from liability for burying or cremating these human remains, at the written direction of a county board of commissioners.

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 human remains for educational or research purposes. The bill amends s. 406.60, F.S., to allow the disposal of human remains, or any part thereof, by either the board, or a cinerator licensed under ch. 497, F.S., by cremation when such human remains are deemed no longer of value to medical or dental education or research.

### **The State Anatomical Board**

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

The bill substantially rewords s. 406.53, F.S., to delete the following exemptions from the requirement to notify the board at the time of death of an indigent person:

- The death was caused by crushing injuries;
- The deceased had a contagious disease; 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 the following new conditions to the notification requirements concerning the death of an indigent person:

- The bodies are mutilated by wounds
- A legally authorized person claims the human remains; and
- The notifications have been already made by a certified funeral director.

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 such that:

- 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 human remains from the board, after payment of the board's expenses incurred for transporting, embalming and storing the human remains; and
- The board is authorized to reject unclaimed or indigent remains for any reason.

The board is added to the list of entities that may become a donee of an anatomical gift of a whole body that is used for medical or dental education or research purposes pursuant to s. 765.513, F.S.

The bill adjusts the current timeframe for auditing the financial transactions of the board from annually to triennially and requires the University of Florida to conduct the audit and provide the report to DFS within 90 days of completion. Current law requires DFS to conduct the audit and report the findings to the University of Florida.<sup>24</sup>

The bill amends s. 406.58, F.S., to conform to the changes made in s. 406.57, F.S., which deleted the term "association" from the list of sources from which the board may collect fees. The bill also limits the board's ability to provide reimbursement for the transportation of human remains to funeral establishments licensed under ch. 497, F.S.

### **Non-transplant Anatomical Donation Organization**

The bill amends s. 406.61, F.S., providing an exemption to a NADO that has been accredited by the AATB from the requirement to receive board approval before accepting anatomical gifts. The bill specifies that a NADO must be accredited by October 1, 2014.

The bill provides that human remains received in this state, either by the board or a NADO, must be accompanied by burial-transit permit. The human remains may not be dissected, disarticulated or segmented until approval has been given by the county medical examiner and specific written consent has been received from an authorized person representing the decedent. Furthermore, the consent must expressly state that the human remains may undergo long-term preservation or extensive preparation, including, but not limited to, removal of the head, arms, legs, hands, feet, spine, organs, tissues, or fluids.

NADOs are added to the list of entities in s. 765.513, F.S., which may become donees of anatomical gifts of whole bodies for medical or dental education or research.

### **Deceased Veterans**

The bill amends ss. 406.50 and 497.607, F.S., to clarify existing law, which requires the determination of a veteran's eligibility for burial in a national cemetery, pursuant to 38 C.F.R. § 38.620.

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<sup>24</sup> Section 406.58(2), F.S.

The bill clarifies that before the final disposition of unclaimed human remains occurs, the person or entity in charge or control of the remains must make a reasonable effort to determine the identity of the deceased person to determine if the deceased is a veteran, spouse, or dependent child of a veteran who may be eligible for burial in a national cemetery. If the human remains are those of an eligible person, then the funeral or direct disposal establishment is required to arrange for interment of the cremated remains in a national cemetery. The bill specifies that “reasonable effort” includes contacting the National Cemetery Scheduling Office, the county veterans’ service office, the regional office of the U.S. Department of Veterans Affairs, or a veterans’ service organization.

The bill defines a “veterans’ service organization” as an association, corporation, or other entity that qualifies as a federally tax exempt organization that is organized for the benefit of the veterans’ burial and interment and recognized by the Memorial Affairs Division of the U.S. Department of Veterans Affairs; or a member or employee of a non-profit entity that facilitates in the identification, recovery, and interment of unclaimed cremated human remains of veterans. A funeral or direct disposal establishment may use the assistance of a veterans’ service organization and is not liable for any damages resulting from the release of required information to determine eligibility as long as it is acting in good faith.

The bill specifies that a funeral or direct disposal establishment is not required to:

- Determine whether the cremated human remains are those of a veteran if a legally authorized person states that the decedent was not a veteran.
- Relinquish possession of the cremated human remains to a veterans’ service organization if the entity is informed by a legally authorized person that the decedent did not desire any funeral, ceremony, or interment-related services recognizing the decedent’s service as a veteran.

### **Burial Permits, Death Certificates and Recordkeeping**

The bill amends s. 382.006, F.S., to authorize DOH to issue burial-transit permits. Currently, only local registrars and subregistrars are authorized in statute to issue burial-transit permits.

The bill also permits DOH to grant an extension of time to a funeral director to provide the medical certificate of cause of death. Similarly, only local registrars and subregistrars is currently authorized to issue extensions for death registrations.<sup>25</sup>

The bill amends s. 382.008, F.S., to add the district medical examiner of the county in which the death occurred or the body was found to a list of persons who are required to file certificates of death. The bill also allows the medical certification of the cause of death to be furnished to the funeral director via electronic transfer. According to DOH,<sup>26</sup> this change conforms to the 2012 implementation of the Electronic Death Registration System.<sup>27</sup>

The bill increases the timeframe within which the medical examiner must determine the cause of death under suspect circumstances governed under s. 406.11, F.S., from 30 days to 12 months after the decedent was last treated. The bill also adds language currently found in s. 406.11, F.S., to s. 382.008, F.S., which specifies that the medical examiner of the county in which the “death occurred or the body was found” is responsible for determining the cause of death.

The bill amends s. 497.382, F.S., clarifying that a funeral establishment, direct disposal establishment, cinerator, and centralized embalming facility must complete a prescribed monthly form that is signed by the embalmer and contains the name of the deceased and other information required by rule. The

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<sup>25</sup> Section 382.008(4), F.S.

<sup>26</sup> Department of Health Bill Analysis of HB 171, dated February 1, 2013, on file with the Health Quality Subcommittee staff.

<sup>27</sup> In FY 2008-2009, the Legislature appropriated \$187,000 in the General Appropriations Act to DOH to support the creation of an Electronic Death Registration System (EDRS) within the Division of Vital Statistics. The EDRS enables funeral directors and certifying physicians to registrar paperless death records.

forms must be maintained on premises for inspection by the Division of Funeral, Cemetery, and Consumer Services within DFS.

## **Terms**

The bill revises the definition of “final disposition.” The bill adds that an anatomical donation of a dead body is considered final disposition. This clarifies that an anatomical donation is the equivalent of burying, cremating or interring a body and the act making an anatomical donation is the final step in process for disposing a body.

The bill clarifies language related to the prohibition of offering an inducement, or “valuable consideration,” 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 replaces the term “physician” in s. 382.006, F.S., with “primary or attending physician,” which is defined to mean a physician who treated the decedent through examination, medical advice, or medication during the 12 months preceding the date of death. This modification clarifies who is required to complete the certificate of cause of death by specifying how to determine a decedent’s primary care physician.

The bill creates s. 406.49, F.S., to provide definitions for part II of ch. 406, F.S., including the definition of “unclaimed remains,” “anatomical board,” “indigent person,” “cremated remains,” “final disposition,” “human remains,” “remains,” “legally authorized person,” and “non-transplant anatomical donation organization.” NADO is defined to mean a tissue bank or other organization that facilitates non-transplant anatomical donations, which mirrors the AATB definition for this type of organization. The bill amends s. 406.56, F.S., to change “the advancement of medical science” to “medical education and research” and reword the existing statute. Conforming changes are made throughout ch. 406, F.S., to change “disposition” to “final disposition.”

## **Repeals**

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.

The bill repeals s. 406.61(3), F.S., a sunset provision regarding submission by museums exhibiting plastinated human remains to submit an affidavit to the board stating that the body was legally acquired and the company providing the body has acquisition documentation on file for the body.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**



None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of Vital Statistics within DOH states that the provisions of the bill will necessitate the training of county health department staff, physicians, funeral directors, and medical examiners on the death registration process, but will not require additional staffing. Thus, DOH can absorb the increased workload within existing resources.