

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 315 Medical Examiners  
**SPONSOR(S):** Health Quality Subcommittee; Roberson  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 620

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	9 Y, 3 N, As CS	McElroy	O'Callaghan
2) Local & Federal Affairs Committee	12 Y, 6 N	Darden	Kiner
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Section 406.06, F.S., entitles a medical examiner to compensation, and a reasonable salary and fees as established by a board of county commissioners. A number of counties have interpreted this provision as authority for their board of county commissioners to authorize their district medical examiner to collect a user fee for a determination of cause of death performed when a body is to be cremated, dissected, or buried at sea pursuant to s. 406.11(1)(c), F.S. The bill amends s. 406.06, F.S., to prohibit a medical examiner or a county from charging a member of the public a fee for an examination, investigation, or autopsy performed by a medical examiner pursuant to s. 406.11, F.S.

Section 382.011, F.S., requires any case in which a death or fetal death resulted from the causes or conditions listed in s. 406.011, F.S., to be referred to the district medical examiner for the determination of the cause of death. The bill corrects a citation in s. 382.011, F.S., to clarify that only deaths and fetal deaths involving circumstances set forth in subsection (1) of s. 406.11, F.S., are required to be referred to the district medical examiner for the determination of the cause of death. The remaining provisions in s. 406.11, F.S., are not related to causes or conditions of death upon which a medical examiner can make a determination.

The bill has no fiscal impact on state government and may have a negative, fiscal impact on those local governments that currently assess a user fee for medical examiner services provided pursuant to s. 406.11, F.S. It is unclear whether counties have statutory authority to collect a user fee for a determination of cause of death performed when a body is to be cremated, dissected, or buried at sea.

The bill provides an effective date of October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Medical Examiners Act

The Medical Examiners Act (Act), ch. 406, F.S., establishes minimum and uniform requirements for statewide medical examiner services. The Act created the Medical Examiners Commission (Commission) which is composed of seven persons appointed by the Governor, the Attorney General and the State Surgeon General. The Commission is responsible for establishing, by rule, minimum and uniform standards of excellence, performance of duties, and maintenance of records requirements for medical examiners.<sup>1</sup> The Commission is additionally responsible for the creation of medical examiner districts throughout the state.<sup>2</sup> There are currently 24 medical examiner districts.<sup>3</sup>

##### Determination of Cause of Death

Each district medical examiner is responsible for conducting investigations, examinations and autopsies and reporting vital statistics to the Department of Health for their district. Section 382.011, F.S., currently requires that any case of death or fetal death due to causes or conditions listed in s. 406.11, F.S., be referred to the district medical examiner for investigation and determination of the cause of death.

The causes and conditions of death listed in s. 406.11(1), F.S., can be separated into two categories. Section 406.11(1)(a), F.S., sets forth causes and conditions related to the circumstances surrounding the death and requires a determination of the cause 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.

Sections 406.11(1)(b) and (c), F.S., relate to transport and disposal of the decedent's remains and require a determination of the cause of death when a dead body is:

- Brought into the state without proper medical certification; or
- To be cremated, dissected, or buried at sea.

Under s. 406.11(1) F.S., the district medical examiner is authorized to perform any such examinations, investigations, and autopsies as he or she deems necessary to determine the cause of death. The complexity of the determination of the cause of death, however, can differ greatly depending on whether the investigation is required pursuant to s. 406.11(1)(a), F.S., or s. 406.11(1)(c), F.S.

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<sup>1</sup> Section 406.04, F.S.

<sup>2</sup> Section 406.05, F.S.

<sup>3</sup> A map of the medical examiner districts in Florida is available at <http://myfloridamedicalexaminer.com/> (last viewed on November 20, 2015).

A determination pursuant to s. 406.11(1)(a), F.S., requires a comprehensive review to determine the cause of a death that occurred under unusual circumstances.<sup>4</sup> Physical inspection of the decedent's remains is typically required.<sup>5</sup> As such, a district medical examiner usually performs autopsies or other necessary physical examinations.<sup>6</sup> A district medical examiner also typically requests and reviews any pertinent documentation related to the person's death.<sup>7</sup>

When a death occurs under ordinary circumstances, the district medical examiner does not perform an autopsy or investigation.<sup>8</sup> The disposition of the remains occurs and no further issues arise. On occasion, issues arise after disposition which raise the question of whether a death actually occurred under ordinary circumstances. In these situations the body is exhumed and the district medical examiner performs a determination of cause of death. This examination cannot occur if the body has been cremated, dissected or buried at sea. Thus, s. 406.11(1)(c), F.S., requires the medical examiner to make a determination of cause of death in situations where there is an irretrievable disposal of the remains.

Determinations of the cause of death performed pursuant to s. 406.11(1)(c), F.S., are generally administrative in nature.<sup>9</sup> The process begins with the funeral director completing the death certificate and forwarding it to the decedent's attending or primary physician for signature.<sup>10</sup> Once the funeral director receives the signed death certificate, he or she forwards it to the district medical examiner for review. Unless the medical examiner identifies an issue on the face of the death certificate, he or she grants approval and the funeral director may proceed with the disposal of the remains.<sup>11</sup> The medical examiner may conduct a more thorough investigation if he or she identifies an issue on the face of the death certificate.<sup>12</sup> For example, if a secondary cause of death is a fractured hip, the medical examiner may request additional information to ensure that it was not related to abuse or neglect. Even in that situation, the investigation is generally less comprehensive than the investigation performed under s. 406.11(1)(a), F.S.

Prior to 2012, the approval process for a death certificate was a slow and arduous paper process.<sup>13</sup> It required the manual entry and the transmittal of information through numerous offices within county and state departments.<sup>14</sup> However, in 2012, Florida's Department of Health automated the process through the Electronic Death Registration System. The electronic transmittal of the information has made the approval process more efficient by reducing reporting time and allows for more timely issuances of death certificates.<sup>15</sup> In 2014, county health departments issued 1,267,336 certified death certificates for which \$13,005,798 in fees were collected.<sup>16</sup>

### Medical Examiner User Fees

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<sup>4</sup> In 2014, 187,944 death certificates were issued. Medical examiners investigation into these deaths consisted of 9,809 autopsies, 5,320 body inspections and 3,291 investigations (body was not viewed). *2014 Annual Report*, Florida Dept. of Law Enforcement (FDLE) Medical Examiners Commission, published August 2015, available at <https://www.fdle.state.fl.us/Content/Medical-Examiners-Commission/MEC-Publications-and-Forms.aspx> (last viewed December 10, 2015).

<sup>5</sup> *Practice Guidelines for Florida Medical Examiners*, Florida Association of Medical Examiners, 2010.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 382.008, F.S. In 2014, there were 187,944 death certificates issued of which 165,419 were issued by physicians. Correspondence from the Florida Department of Health to Florida House of Representatives Health Quality Subcommittee, dated October 21, 2015 (on file with the Health Quality Subcommittee).

<sup>11</sup> Florida Association of Medical Examiners, *supra* footnote 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Electronic Death Registration*, Florida Department of Health.

<sup>14</sup> <http://www.floridahealth.gov/%5C/certificates/certificates/EDRS/index.html> (last viewed on November 20, 2015).

<sup>15</sup> *Id.*

<sup>16</sup> See s. 382.0255(1), F.S. (authorizing the Department of Health to charge fees for retrieving and reproducing death certificates); Death Sales Chart, provided by the Department of Health on file with the House of Representatives Health Quality Subcommittee (amount of fees collected in 2014).

District medical examiners and associate medical examiners are entitled to reasonable salary and fees as established by the board of county commissioners.<sup>17</sup> Fees are approved on a county by county basis and may vary within a district.<sup>18</sup> Twenty-two of the twenty-four medical examiner districts operate their own facilities, of which 19 charge a user fee for cremation approval.<sup>19</sup> The user fees range from no charge in 25 counties<sup>20</sup> to more than \$50 in two districts.<sup>21</sup> The estimated revenue from these fees in 2014 was approximately \$3.98 million.<sup>22</sup>

### Effect of Proposed Changes

The bill amends s. 406.06, F.S., to prohibit a medical examiner or a county from charging a member of the public a fee for an examination, investigation, or autopsy performed pursuant to s. 406.11, F.S.

Section 382.011, F.S., requires any case in which a death or fetal death resulted from the causes or conditions listed in s. 406.11, F.S., to be referred to the district medical examiner for the determination of the cause of death. The bill corrects a citation in s. 382.011, F.S., to clarify that only deaths and fetal deaths involving circumstances set forth in subsection (1) of s. 406.11, F.S., are required to be referred to the district medical examiner for the determination of the cause of death. The remaining provisions in s. 406.11, F.S., are not related to causes or conditions of death upon which a medical examiner can make a determination. Instead, the remaining provisions:

- Grant medical examiners discretion to perform autopsies and other laboratory examinations necessary to determine the cause of death;
- Require the Medical Examiners Commission to adopt rules to require a medical examiner to notify the decedent's next of kin of a medical examiner investigation;
- Prohibit a medical examiner from retaining or furnishing a body part of the deceased for research or other purposes without approval by the next of kin; and
- Provide rulemaking authority for the Medical Examiners Commission.

The bill provides an effective date of October 1, 2016.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 382.011, F.S., correcting and clarifying a cross-reference to s. 406.11(1), F.S.

**Section 2:** Amends s. 406.06, F.S., prohibiting a medical examiner or county from charging a fee to a member of the public for an examination, investigation, or autopsy performed pursuant to s. 406.11, F.S.

**Section 3:** Provides an effective date of October 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

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<sup>17</sup> Section 406.06(3), F.S.

<sup>18</sup> 2016 FDLE Legislative Bill Analysis for HB 315 dated October 7, 2015 (on file with the Florida House of Representatives Health Quality Subcommittee).

<sup>19</sup> *Id.*

<sup>20</sup> As of 2013, District 2 (Franklin, Gadsden, Leon, Liberty, Jefferson, Taylor, and Wakulla), District 8 (Alachua, Baker, Bradford, Gilchrist, Levy, Union, and Dixie), District 14 (Bay, Calhoun, Gulf, Jackson, Washington and Holmes), District 20 (Collier), and District 22 (Charlotte) did not charge medical examiner approval user fees. Additionally, Okaloosa (District 1), Hardee (District 10), and Highland (District 10) did not charge a medical examiner approval user fee.

<sup>21</sup> District 11 (Miami-Dade) and District 17 (Broward). Miami-Dade County charges a fee of \$63; Broward County charges a fee of \$54.

<sup>22</sup> FDLE, *supra* footnote 18.

None.

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

**1. Revenues:**

Currently 19 of the 24 medical examiner districts, comprising 42 counties, charge user fees for any determination of the cause of death performed pursuant to s. 406.11(1)(c), F.S. The user fees vary from district to district. Assuming medical examiners charged a user fee for every death that occurred within their medical examiner districts in 2014, the medical examiners' charges would have totaled approximately \$3.98 million.<sup>23</sup> The bill amends s. 406.06, F.S., to prohibit a medical examiner or a county from charging a member of the public such fees. Consequently, counties will be negatively impacted and won't be able to derive revenue from such fees.

**2. Expenditures:**

Indeterminate. The actual cost to the counties is unclear as there is a broad discrepancy in the user fees currently charged (fees range from no charge to \$63 per approval), and there does not seem to be a correlation between the fees charged to services being provided by the medical examiner.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Because the bill prohibits medical examiners and counties from charging fees to a member of the public, the private sector may achieve some cost-savings.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

It is unclear whether counties have statutory authority to collect a user fee for a determination of cause of death performed when a body is to be cremated, dissected, or buried at sea pursuant to s. 406.11(1)(c), F.S. For example, despite an Attorney General Opinion from 2003<sup>24</sup> stating that a cremation approval fee did not appear to be authorized by statute and that cremation approval should be provided without charge to the public as a service of the medical examiner's office, 43 counties still charge such a fee.

Article VII, s. 18 of the Florida Constitution, prohibits the Legislature from enacting a general law that reduces the authority of municipalities or counties to raise revenues in the aggregate, unless each chamber of the Legislature enacts such law by two-thirds vote or unless an exemption applies. Due to the uncertainty as to whether counties currently have the authority to charge fees pursuant to s. 406.11(1)(c), F.S., the bill, if enacted, may be challenged as being in violation of Article VII, s. 18 of the Florida Constitution, but would withstand such a challenge if enacted by a two-thirds vote of each chamber or if the law is determined to have an insignificant fiscal impact on the counties.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not provide authority or require implementation by administrative agency rulemaking.

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<sup>23</sup> FDLE, *supra* footnote 18.

<sup>24</sup> 2003-57 Fla. Op. Att'y Gen. 5 (December 15, 2003).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On December 1, 2015, the Health Quality Subcommittee adopted an amendment and reported the bill favorable as a committee substitute. The amendment prohibits a medical examiner or a county from charging a member of the public a fee for certain services performed by medical examiners.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.