

- SUBJECT:** Revising the Texas Funeral Service Commission
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 6 ayes — Coleman, Capelo, Glaze, Maxey, McClendon, Uresti
0 nays
3 absent — Gray, Delisi, Hilderbran
- WITNESSES:** For — Harold Rose, American Association of Retired Persons; Tom “Smitty” Smith, Texas Public Citizen; Rob Schneider, Consumers Union
Against — None
On — Lamar Hankins
- BACKGROUND:** The Texas Funeral Service Commission was established as the State Board of Embalming in 1903 to license and regulate embalmers in order to contain contagious diseases. By 1999, its authority had expanded to include licensing and regulation of embalmers, funeral directors, funeral establishments, and embalming facilities, and enforcement of laws regarding prepaid funerals, vital statistics, and public protections from fraud and misrepresentation.

The commission operates with a nine-member board whose members serve staggered six-year terms, including five consumer members and four licensed members. The board regulates about 5,000 individuals and 1,300 licensed establishments.
- DIGEST:** CSHB 3516 would make changes to:
- ! board size, composition, and meeting times;
 - ! staffing-related requirements;
 - ! licensure provisions, including issuance of licenses to applicants who hold licenses in other states;
 - ! requirements for embalming preparation rooms; and
 - ! complaint and penalty provisions.

The act would take effect September 1, 1999, at which time the terms of the members of the commission would expire and the board would be abolished. The governor would be directed to make appointments to the commission as soon as practicable after the effective date.

Board members. The new board would include six, rather than nine, members. Two, rather than four, members would have to hold licenses both as embalmers and funeral directors, and four would have to represent the general public. The presiding officer and the assistant presiding officer would have to be public members.

In a matter pending before the commission, board members with personal or private interests or employed by entities with personal or private interests could not vote or participate in an informal conference on the matter.

Affected members' positions would be considered vacant if, because of company mergers, the members violated current prohibitions against having on the board more than one member who is an officer or an employee of the same corporation.

The commission would have to meet in Austin at least once each calendar quarter, instead of twice a year.

Staffing and staff responsibilities. The commission no longer would be authorized to hire a general counsel. The attorney general would have to designate at least one employee to advise and represent the commission. The salary of the executive director could not exceed the maximum level established in the general appropriations act.

The commission would have to report to the governor annually its compliance with requirements to:

- ! develop and implement policies that clearly define staff and commission responsibilities and career-ladder and performance evaluations; and
- ! maintain a written plan regarding access to commission information for people who cannot speak English or who have developmental disabilities.

Licensing changes. The commission would have to change procedures relating to the issuance of reciprocal licenses to include criminal background checks, automatic issuance of licenses to persons with substantially similar requirements in other states, and other changes.

Regulation of embalming services specifically would be brought under the authority of the commission. Funeral establishments would not have to have embalming facilities on the premises if the owner submitted a written petition to the commission requesting such an exemption, and if embalming services would be performed only at facilities owned by the funeral establishment and located within 50 miles of the establishment.

Complaint information. All information in complaint files that had reached final disposition would be public information. The commission no longer could contract with individuals to investigate complaints.

Penalties and other measures. The commission no longer could delegate to the executive director the power to subpoena. The executive director could issue a subpoena only by commission order.

License holders would be given the right to a hearing in cases of licensure refusals or suspensions and the imposition of administrative penalties and reprimands.

The amount of a penalty to be assessed against a license holder for a violation could be disclosed only to the license holder unless the license holder waived the right to a hearing or paid the amount to the commission. The procedure for contesting penalties would be changed for penalties greater than \$5,000.

SUPPORTERS
SAY:

CSHB 3516 would enact much-needed improvements in operations of the Funeral Service Commission and also would improve the regulation of funeral services. This bill represents a balance of concerns and would protect the rights of the public and the industry.

Reports from the State Auditor's Office (SAO) in 1995 and 1997 concluded that the lack of effective management controls inhibited the commission from effectively accomplishing key functions. SAO found significant weaknesses in the agency's administration of licensing requirements, inspections and

investigations, management of financial and human resources, and gathering of relevant operational information.

For example, licenses were awarded to applicants who did not fulfill all necessary requirements, or licenses were renewed to license holders without checking their compliance histories. License holders also were not monitored to identify repeat violators and to penalize them appropriately. SAO also found complaint files and information to be lacking and complaint resolution to take too long. Agency personnel files lacked documentation to support raises or reclassifications.

As another symptom of management problems, the commission has had to hire four executive directors in the past four years, some of whom have left under unfavorable circumstances. The current director gave himself a raise of \$20,000, which exceeded the maximum amount authorized under the appropriations act.

A stand-alone agency regulating the industry is needed to protect consumers adequately. Regulating funeral services is not a public health issue, but a consumer issue. Grief-stricken family members are vulnerable to excessive charges and other unscrupulous or negligent activities concerning the memorial and disposition of the remains of their loved ones. Transferring the agency's functions to the Texas Department of Health, as some suggest, would reduce industry oversight inappropriately to a public health concern.

Creating a board with a majority membership of consumers would counter long-held concerns that the commission has served the funeral industry more than it has served the public. The board would include industry members to provide balance and expert advice on technical matters. Requiring industry members of the board to be dually licensed as embalmers and funeral directors would not limit industry representation on the board significantly, because most licensed individuals are dually licensed. Also, since the industry would have only two representatives on the board, requiring dual licensure also would guarantee that sufficient expertise was available when complex problems emerged.

Removing the commission's power to delegate subpoena power to the executive director would keep the authority in the hands of a commission that was directly responsible to the governor, and thereby would limit abuse of

that power. An order by the commission could be enacted by the presiding officer and would not necessitate an open meeting of the commission.

This bill focuses on making significant improvements with minimal disruption of agency operations and regulatory functions, since most of today's problems stem from the management of the commission, not from the laws governing industry regulation. Abolishing the commission would be too drastic, and wholesale review or reform of mortuary and related laws would be better left to the sunset review process.

The embalming room exemption would help smaller operators who may own about four establishments within four proximate rural communities, such as in West Texas. It would place in statute a provision that the commission had promulgated by rule and had used for years before an attorney general's opinion that stated a statutory base was necessary.

OPPONENTS
SAY:

The Funeral Service Commission has been plagued with problems for at least 20 years and should be abolished altogether. The Texas Department of Health easily could handle any regulation deemed necessary for this industry.

The Sunset Advisory Commission recommended abolishing the commission in 1980 and again in 1990, finding that the commission's work did not serve to protect the public, that embalming did not have a significant public health significance, and that there is no known transmission of contagious disease by unembalmed human remains.

OTHER
OPPONENTS
SAY:

CSHB 3516 should do more to improve funeral service regulation. Many of the current law's provisions are arcane and ambiguous and should be updated and clarified to reflect current business practices.

Adding more public members to the board would not necessarily improve regulation of the commission, because some of the public members appointed in the past did not seem to take their responsibilities seriously. The 1997 SAO report stated that one public member missed seven of ten meetings in one calendar year, and the other four public members missed 28 percent of the meetings in that period.

No industry members should be allowed to serve on the board. If industry advice is needed, the board could appoint advisory committees of industry members.

Requiring industry members to be dually licensed as embalmers and funeral directors would eliminate opportunities for representation of singly licensed individuals on the board.

CSHB 3516 would newly authorize the exemption of certain funeral homes from the requirement that they maintain an embalming preparation room at their facility. This provision would benefit only SCI, the state's largest funeral home corporation, and no other operators. Embalming preparation rooms are expensive to maintain, and consumers and smaller funeral home operators both could benefit from less costly arrangements in which a funeral home contracts with a mortuary service for embalming. This provision should be amended to remove the requirement that both the embalming facility and the funeral home be owned by the same owner, or should be stricken so that all facilities would have to maintain embalming preparation rooms.

Requiring the commission to issue subpoena powers to the executive director by order would hinder effective investigations by publicly announcing the intent of the investigation and by allowing unscrupulous licensed individuals to destroy or alter records or evidence before issuance of the subpoena. The enactment of such an order also would slow the process of investigating problems that need immediate response.

NOTES: Major changes made by the committee substitute to the original bill include:

- ! adding provisions to abolish the board and change board composition;
- ! removing the staff position of general counsel;
- ! moving hearings to the State Office of Administrative Hearings;
- ! removing a provision that would have capped at \$10,000 the total penalty for any single complaint; and
- ! adding the requirement for the board to meet quarterly.

HB 502 by Tillery, relating to consumer complaints, was left pending in the House Public Health Committee on April 22.

HB 2715 by Pitts, which would move the commission's functions to the Texas Department of Health, was reported favorably as substituted by the House Public Health Committee on April 22.

SB 440 by Moncrief, which would move the commission's sunset date from September 1, 2003, to September 1, 2001, passed the Senate on March 15, was reported favorably by the House Public Health Committee on April 22, and was recommended for the Local, Consent, and Resolutions Calendar.