

SUBJECT: Continuing the Texas Funeral Service Commission

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — S. Thompson, Wray, Allison, Frank, Guerra, Lucio, Price,
Sheffield, Zedler

0 nays

2 absent — Coleman, Ortega

WITNESSES: For — (*Registered, but did not testify*: Lee Castro)

Against — None

On — (*Registered, but did not testify*: Julie Davis, Sunset Advisory
Commission; Janice McCoy, Texas Funeral Service Commission)

BACKGROUND: Established in 1903 as the State Board of Embalming, the Texas Funeral
Service Commission (TFSC) regulates the funeral and death care industry
with the mission of protecting the public from deceptive practices. TFSC's
main functions are:

- licensing funeral directors and embalmers and ensuring compliance with continuing education requirements;
- inspecting and licensing funeral homes, commercial embalming facilities, crematories, and certain cemeteries; and
- investigating and resolving complaints and enforcing statutes and rules.

Governance. TFSC consists of seven members: four public members, two dual-licensed as a funeral director and an embalmer, and one cemetery owner and operator. Members are appointed to staggered, six-year terms by the governor and approved by the Senate. The governor designates the presiding officer for a three-year term that rotates between a public member and industry member. The members choose an assistant presiding

officer from public members for a one-year term.

Funding. In fiscal year 2017, TFSC's revenue totaled nearly \$1.8 million, mostly from licensing fees. About \$76,000 came from sales of TFSC's law book and funeral consumer brochure, and a small amount came through other appropriated receipts. TFSC transferred more than \$957,000 in excess of its appropriations to the general revenue fund.

Staffing. TFSC employs 11 full-time employees, all based in Austin. Two staff members travel throughout the state to conduct inspections.

TFSC would be discontinued September 1, 2019, unless continued in statute.

DIGEST:

CSHB 1540 would continue the Texas Funeral Services Commission (TFSC) until 2031, discontinue its regulation of non-perpetual care cemeteries, standardize enforcement processes, and update licensure requirements.

Discontinuing TFSC's regulation of cemeteries. CSHB 1540 would remove TFSC's authority over non-perpetual care cemeteries, which are defined in statute as cemeteries that do not have associated perpetual care trust funds. TFSC would be removed from the process for enforcing cemetery law and would no longer be able to request the attorney general bring an action for injunctive relief to enforce provisions relating to cemeteries.

The bill also would replace the TFSC member who is a cemetery owner or operator with a member who is a crematory owner or operator. This provision would not affect any current TFSC members but would require the governor to appoint a crematory owner or operator in place of the cemetery owner or operator upon the expiration of that member's term.

Inspections and enforcement. TFSC would be required to inspect a crematory or funeral establishment at least once every three years instead of every two years.

The bill would clarify the distinction between a funeral director's first contact with the person authorized to control the disposition of a decedent's remains and the transport of the body. A funeral director would be permitted to direct an unlicensed person, a provisional license holder, or an embalmer in the removal of a dead human body. At the direction of a justice of the peace or other law enforcement official, a dead human body could be transferred without the direction of a funeral director.

The bill would allow TFSC to exempt a funeral establishment from the requirement that they have a room for embalming preparation if the establishment meets TFSC's requirements for exemption.

Training. The executive director of TFSC would be required to create a training manual and to distribute a copy annually to each member of TFSC. Each member would be required to sign and submit a statement to the executive director that acknowledged that the member had received and reviewed the training manual.

TFSC's training program would be required to add information on the law governing TFSC operations, the functions, rules, and budget of TFSC, and the scope and limitations on TFSC rulemaking authority. TFSC members would be required to complete training added by this bill by December 1, 2019, and would not be permitted to vote, deliberate, or be counted as a member in attendance at a meeting without having completed the training.

Licensing. The bill would establish that allowing or assisting an unlicensed person to engage in crematory services, funeral directing, or embalming violates funeral service law. TFSC would be authorized to bring an action for appropriate injunctive relief against an unlicensed person to enjoin a violation.

TFSC would be permitted to order a license holder who violated funeral service law to pay a refund to the person harmed of up to the full amount paid.

The bill would require, rather than permit, TFSC to adopt a staggered license renewal process. TFSC would be permitted to set renewal fees and late fees by rule. TFSC would be required to permit a crematory applying for a license renewal to submit a written statement stating that its previous application information had not changed.

TFSC would be permitted to issue duplicate licenses as needed for license holders to comply with posting requirements. The bill would repeal TFSC's authority to issue provisional licenses to out-of-state applicants.

Advisory committees. TFSC would be permitted to appoint advisory committees.

Annual report. The bill would require TFSC to prepare an annual, rather than biennial, report describing the commission's activities over the preceding fiscal year. The report would have to include information on licensing, inspection, and enforcement activities, changes to commission policies, and complaint information. TFSC would be required to post the report on its website. The requirement for the annual report would take effect September 1, 2020.

Confidentiality of complaint information. CSHB 1540 would make all complaint and investigation information compiled by TFSC exempt from public information laws or legal requests until dismissal or final resolution. Ongoing complaint or investigation information could be disclosed only to TFSC, its employees involved in license holder discipline, a party to a disciplinary action against the license holder, a law enforcement agency, or a governmental agency if the disclosure was required or permitted by law. TFSC would not be required to release the identity of a complainant who would not testify at a hearing.

The bill would take effect September 1, 2019. The bill would not apply to any conduct, license applications, fees, or exemption requests before the effective date.

SUPPORTERS CSHB 1540 would relieve the Texas Funeral Service Commission (TFSC)

SAY: of certain responsibilities that were not necessary to protect the public, streamline and standardize enforcement processes, and modernize licensure requirements.

Most cemeteries are exempt from state oversight or are regulated by the Department of Banking. TFSC regulation of the state's five non-perpetual care cemeteries is unnecessary and does not protect consumers. Inspections and a lack of substantive complaints show no need for continued regulation to protect the public. Removing non-perpetual care cemeteries from TFSC regulation would eliminate superfluous state-funded functions.

While the Texas Department of Licensing and Regulation (TDLR) would be capable of handling the responsibilities of TFSC, the latter is a well run agency overall and moving it to TDLR would not result in any cost savings to the state.

OPPONENTS SAY: CSHB 1540 should discontinue the Texas Funeral Services Commission and transfer its responsibilities to the Texas Department of Licensing and Regulation.

NOTES: According to the Legislative Budget Board, the bill would have a negative impact of \$1,000 on general revenue related funds through fiscal 2020-21.