

## **BILL ANALYSIS**

Senate Research Center  
76R5056 MXM-F

S.B. 1077  
By: Carona  
State Affairs  
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As Filed

### **DIGEST**

Currently, the Texas Funeral Service Commission's integrity and effectiveness is compromised by the ambiguity of jurisdictional provisions under the Mortuary Law. For example, certain provisions allow a former executive director to usurp powers and duties which are delegated to the commissioners. S.B. 1077 clarifies funeral directing regulations, effectively returning control to the commissioners.

### **PURPOSE**

As proposed, S.B. 1077 clarifies and streamlines funeral directing regulations.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 251C, Section 1, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to authorize the transferral of a dead human body (corpse) to and from an airport and crematory without the a licensed funeral director personally making the transfer. Makes conforming changes.

SECTION 2. Amends Chapter 251E, Section 2, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to require the Texas Funeral Service Commission (TFSC) to file a report with the governor each year, regarding TFSC compliance with Subsections P and Q.

SECTION 3. Amends Chapter 251H, Section 2, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582B, V.T.C.S.), to require TFSC to hire an executive director to manage TFSC's administrative affairs, and to establish conditions of the executive director's employment. Deletes existing TFSC authorization to employ an executive director to carry out provisions of this Act.

SECTION 4. Amends Chapter 251K, Section 2, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to require commissioners' committee meetings, rather than meetings of the commission, to be open and public. Provides that a person can speak before the commissioner without providing prior notice to TFSC.

SECTION 5. Amends Chapter 251L, Section 2, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to clarify and expand TFSC and executive director powers.

SECTION 6. Amends Chapter 251O, Section 2, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to provide that TFSC is subject to the open meetings law, Chapter 551, Government Code, rather than Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, V.T.C.S.), the Administrative Procedure Act, rather than the Texas Register Act, and Chapter 2001, Government Code. Deletes text regarding the Texas Register Act.

SECTION 7. Amends Chapter 251, Section 2, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), by adding Subsection U, to prohibit compensation for a TFSC employee who is a certain political party officer.

SECTION 8. Amends Chapter 251, Section 2, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), by adding Subsection V, to require a certain procedure for seeking the attorney

general's advice. Requires a majority of TFSC commissioners' approval for an opinion.

SECTION 9. Amends Chapter 251, Section 2A(d), Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to require programs required under Subsections (a) and (b) to be updated annually and filed with the governor's office.

SECTION 10. Amends Chapter 251F, Section 3, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to require, rather than authorize, TFSC to take a certain action if the license applicant meets the requirements established under this subsection, and deletes existing text regarding equivalent license requirements. Sets forth requirements for a reciprocal license applicant regarding proof and passing a written examination. Requires TFSC to administer a written examination at each regularly scheduled meeting.

SECTION 11. Amends Chapter 251H, Section 3, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to authorize TFSC to refuse to license or permit a certain person after, rather than without, a hearing. Provides that a violation of this Act includes a violation of Chapter 154, Finance Code, rather than Section 1, 5, or 9, Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, V.T.C.S.). Deletes text regarding penalties, request for a hearing, and agreement expressed in Section 6G(d). Makes conforming changes.

SECTION 12. Amends Chapter 251I, Section 3, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to delete the specification that TFSC is authorized to issue rules that it finds desirable.

SECTION 13. Amends Chapter 251, Section 4, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to exclude a certain establishment from being required to meet the requirements of Paragraphs (A) and (E), rather than sub-sections 1 and 5, of Subdivision 1 of Subsection C, rather than paragraph C. Requires an embalming service to comply with this Act. Sets forth justifications for funeral establishment exemptions from the requirements of Subsection C. 1.(D). Requires the executive director to notify the petitioner of TFSC's decision. Provides that an exemption remains in effect until certain actions have been performed. Authorizes a funeral establishment to waive the right to a hearing. Provides that a violation of this Act includes certain solicitation without a permit issued under Subchapter C, Chapter 154, Finance Code, rather than Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, V.T.C.S.). Requires the Texas Department of Insurance, rather than the State Board of Insurance, to adopt a certain joint memorandum in conjunction with other authorities. Makes conforming and nonsubstantive changes.

SECTION 14. Amends Chapter 251B, Section 5, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to subject rules TFSC adopts to Chapter 2001, Government Code, rather than the Texas Register Act (Article 6252-13a, V.T.C.S.).

SECTION 15. Amends Chapter 251, Section 6C, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), as follows:

Sec. 6C. New heading: APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Entitles a person to a hearing in accordance with Chapter 2001, Government Code, rather than the Texas Register Act (Article 6252-13a, V.T.C.S.). Provides that certain laws govern a TFSC reprimand. Requires, rather than authorizes a proceeding brought under Subsection (b) to be held before a State Office of Administrative Hearings-employed administrative law judge, rather than hearings officer. Deletes text requiring the executive director to take certain actions regarding the hearings officer. Authorizes a funeral establishment to waive the right to a hearing by written notification to TFSC. Makes conforming changes.

SECTION 16. Amends Chapter 251, Section 6D, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to clarify the public's access to information obtained in a complaint investigation. Requires a potential TFSC private investigator to have been previously employed as an investigator by certain law enforcement agencies for at least 12 months. Deletes text regarding jeopardizing an undercover investigation and complaint investigation information. Makes conforming changes.

SECTION 17. Amends Chapter 251, Section 6F, Acts of the 53rd Legislature, Regular Session, 1953

(Article 4582b, V.T.C.S.), to provide that certain entities are subject to the provisions of the Administrative Procedure Act, Chapter 2001, Government Code. Makes conforming changes.

SECTION 18. Amends Chapter 251, Section 6G, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to authorize TFSC to assess an administrative penalty which does not exceed \$10,000 for any single complaint. Deletes text regarding an administrative penalty subsequent to a hearing, determination of violation procedures, deadlines for a hearing, failure to pay and recovery of a penalty, and penalty depositing procedures.

SECTION 19. Amends Chapter 251, Section 6H, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to authorize TFSC to issue a reprimand without a hearing, if the hearing was waived, rather than as provided by this section. Deletes text regarding determination of violation and entitlement to a hearing. Makes nonsubstantive changes.

SECTION 20. Amends Chapter 251, Section 6I, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, V.T.C.S.), to make conforming changes.

SECTION 21. Effective date: September 1, 1999.  
Makes application of this Act prospective.

SECTION 22. Emergency clause.