

**SUBJECT:** Continuing the Texas Funeral Service Commission

**COMMITTEE:** Public Health — committee substitute recommended

**VOTE:** 7 ayes — Gray, Coleman, Capelo, Longoria, Maxey, Uresti, Wohlgemuth  
0 nays  
2 absent — Delisi, Glaze

**WITNESSES:** For — Lamar W. Hankins, Funeral Consumers Alliance and Austin Memorial and Burial Information Society; Rob Schneider, Consumers Union; *Registered but did not testify:* B.F. Hank Carroll, Texas Cemeteries Association; W. Brown Claybar and Jim Garrison, Texas Funeral Directors Association; Harold L. Rose, American Association of Retired Persons  
  
Against — None  
  
On — Edward Kubicek and Sandra Smith, Texas Funeral Service Commission; Erica Wissolik, Sunset Advisory Commission

**BACKGROUND:** The Texas Funeral Service Commission (FSC) was established as the State Board of Embalming in 1903 to license and regulate embalmers in order to contain contagious diseases. In 1987, the Legislature changed the board's name and expanded its authority. The commission now licenses both funeral directors and embalmers and enforces laws involving prepaid funerals, vital statistics, and public protections from fraud and misrepresentation. The FSC regulates about 5,000 individuals and 1,300 licensed establishments.

The FSC operates with a board of commissioners whose six members, appointed by the governor, serve staggered six-year terms. The board includes four public members and two commissioners who are licensed as both an embalmer and a funeral director. The commission operates with 10 FTEs and a budget of \$1 million in the current biennium and has a proposed budget of \$1.4 million for fiscal 2002-03.

The FSC last underwent sunset review in 1991. In 1999, the 76th Legislature moved the commission's sunset date from 2003 to 2001. Unless continued, the commission's authority will expire September 1, 2001.

DIGEST:

CSHB 3067 would continue the FSC until September 1, 2003. Major changes would include:

- ! increasing the number of commissioners from six to seven;
- ! requiring inspection of a licensed funeral establishment at least once every two years, rather than once a year, on a risk-assessment basis;
- ! establishing requirements for retail price lists and purchase agreements for cemeteries and crematories;
- ! requiring registration of cemeteries and crematories with the FSC;
- ! enlisting the aid of the Department of Information Resources (DIR) in regard to software and data collection;
- ! contracting with the attorney general to ensure adequate access to legal services; and
- ! forming a task force to monitor implementation.

CSHB 3067 would increase the number of commissioners from six to seven, three of whom would be licensed as both an embalmer and a funeral director. The governor would have to appoint the additional member no later than November 1, 2002. The commission would be added to the Health Professions Council, making a total of 15 regulatory boards. Under this bill, however, the telephone complaint system operated by the council would not apply to the FSC.

The FSC would have to inspect a licensed funeral establishment at least once every two years rather than annually. If the FSC found an establishment in violation of a law governing funeral directing and embalming, death records, or solid waste disposal, the FSC would have to inspect the establishment annually until the commission determined that the establishment was free of violations. The FSC would have to study the risk-based assessment methods used by the Texas Department of Health and the Texas Department of Licensing and Regulation and would have to establish criteria no later than March 1, 2002, regarding when it should inspect an establishment based on the risk of violation.

The commission also would have to adopt rules no later than March 1, 2002, concerning filed complaints, which would allow for a hearing process, a complaint dismissal process, and related procedures.

CSHB 3067 would establish requirements regarding retail price lists and purchase agreements for cemeteries and crematories similar to those for funeral establishments. It would add making false or misleading statements regarding cemetery or crematory services to the list of violations of funeral directing and embalming law.

A funeral director would have to register a cemetery or crematory with the FSC within 30 days after the date the director used the cemetery or crematory unless the director already had registered it. The commission would have to prescribe the registration form. The funeral director would have to provide the name, address, and telephone number of the cemetery or crematory and the name of a contact person. If necessary, the director would have to update the registration information at least once a year with regard to cemeteries and crematories used in the previous calendar year.

DIR would have to help the FSC negotiate a contract for software and technical support to improve the compilation of statistics and other data specified by the bill. DIR would not be responsible for implementing or providing technical support to the commission regarding the software.

The FSC would have to contract with the attorney general to ensure adequate access to legal services, including consultation about the commission's daily and legal interpretations regarding its authority.

Not later than December 1, 2001, the FSC would have to develop a plan for implementing the provisions connected with the DIR and the attorney general. The plan would have to include a priority for each required task, the identity of any solutions that could be implemented quickly, a cost estimate, and a schedule for task completion.

The FSC would have to report quarterly on the status of its efforts to the Sunset Advisory Commission and a six-member task force created for the purpose of reviewing the FSC's plan and monitoring its implementation. The task force would have to include a representative from and appointed by

each of the following: the attorney general, the comptroller, DIR, and the state auditor. The comptroller would have to appoint a consumer representative and a representative of the funeral industry to the task force. Provisions of the bill related to DIR, the attorney general, the commission's plan, and the task force would expire on September 1, 2003.

CSHB 3067 would repeal portions of the Occupations Code related to renewal of provisional and funeral establishment licenses; set a uniform expiration date for licenses; and authorize two commissioners, before a hearing was conducted, to participate in an informal conference related to a matter to be considered in the hearing.

The Sunset Commission would have to determine how much progress the FSC had made in addressing and implementing solutions regarding:

- ! information resources and legal services issues;
- ! formal rules outlining an open and fair complaint system;
- ! clearer guidelines to ensure a more effective use of penalties;
- ! a risk-based approach to scheduling inspections; and
- ! any other analyses the Sunset Commission deemed appropriate.

No later than September 1, 2002, the FSC would have to report to the Sunset Commission on the status of its progress. If Sunset determined that the FSC's progress was inadequate, it would have to consider whether to recommend that the Legislature abolish the commission and transfer its function to the Department of Licensing and Regulation.

The bill would add standard sunset provisions requiring training of board members, training and information on the State Employee Incentive Program, and licensing matters.

This bill would take effect September 1, 2001, except as otherwise specified.

SUPPORTERS  
SAY:

CSHB 3067 would continue the FSC and require improvements in its operations, and it would strengthen the regulation of funeral services. The bill would balance concerns and protect the rights of the public and the funeral service industry.

Maintaining a board with majority public membership would help counter long-held concerns that the FSC has served the funeral industry more than it has served the public. At the same time, increasing the industry representation to three members would guarantee that sufficient expertise was available when complex problems arose. Also, it is important to switch from an even number to an odd number of commissioners.

The bill would serve the public interest by removing the requirement for annual inspection of all funeral establishments and requiring the commission to base inspections, which would be conducted every other year, on risk assessment. Required annual inspections prevent the commission from targeting its limited resources for conducting effective on-site visits.

Establishing standards regarding retail price lists and purchase agreements for cemeteries and crematories would be an important first step toward public protection in regard to a consumer issue that affects almost every citizen. Requiring the registration of cemeteries and crematories with the commission would ensure responsibility for complete disposition of a body. Previously, many consumers were unaware that funeral directors were not accountable for burial or crematory services, even when the funeral director subcontracted for such services.

CSHB 3067 would give the FSC the oversight it needs to operate more efficiently and effectively. Having it work in conjunction with DIR for technical expertise and with the attorney general for legal expertise could save the state money in the long run, while further protecting the public. Establishing a task force and continuing Sunset Commission oversight would ensure implementation of the bill's requirements and would increase the Legislature's confidence in FSC's accountability.

**OPPONENTS  
SAY:**

The FSC has been mismanaged for years and is ineffective in protecting the public. The Sunset 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 enough public health significance, and that there is no known transmission of contagious disease by human remains that are not embalmed.

The state has waited too long for the FSC to shape up. Although the commission does seem to be more on course, CSHB 3067 would require continued oversight by the Sunset Commission, DIR, the attorney general, the comptroller, and the state auditor. Requiring that many state agencies to oversee a commission with 10 employees for the next two years would amount to a misuse of state resources. If the state decides it is in the public's interest to retain the commission's duties, the Legislature should move them to an agency with proven accountability, such as the Department of Licensing and Regulation.

OTHER  
OPPONENTS  
SAY:

The FSC has shown improvements by meeting more of its performance measures within the past biennium. The state needs more regulatory authority with regard to cemeteries and crematories, which the original version of HB 3067 would have provided. Since the commission has demonstrated more accountability, the state should not further delay bringing cemeteries and crematories under state regulation.

NOTES:

The committee substitute differs from filed version by deleting the expansion of the FSC's regulatory authority to include cemeteries or crematories and by removing related provisions. The substitute would require a funeral director who used a cemetery or crematory to register it with the FSC within a specific time frame and to update the registration as necessary. The substitute would remove the provision that a funeral director's liability to the consumer would not be limited because the director contracts for cemetery or crematory services. It would modify the purchase agreement for cemeteries and crematories to include a statement that complaints could be directed to the attorney general's consumer protection division rather than to the FSC.

The substitute would require DIR to help the commission negotiate a contract for software and technical support to improve the compilation of statistics. It also would specify that DIR would not be responsible for implementing or providing technical support regarding the software.

The companion bill, SB 313 by Zaffirini, was reported favorably as substituted by the Senate State Affairs Committee on April 25.