

# Legislative and Regulatory Update



**December 2009**

## **INTRODUCTION**

The First Session of the 111<sup>th</sup> Congress finally came to an end on Christmas eve with the passage by the Senate of its version of health care reform, the DOD Appropriations bill which also provides interim funding for the wars in Iraq and Afghanistan and bill to raise the federal debt ceiling to help pay for it all. Left on the table was a permanent fix for the estate tax, the bill to establish a new national energy policy (cap & trade) and legislation to revamp how the federal government regulates financial institutions and consumer financial products and stimulate job creation. With the public still anxious and concerned with the growing federal deficit, the economy and jobs coupled with the looming 2010 elections, Congress must begin to deal with reality save their political agenda for the campaign trail. With addition of Immigration reform to their 2010 agenda, Congress and the President will have a very, very difficult year ahead. Moreover, if the regulatory agencies such as EPA and OSHA begin to step-up their enforcement and regulatory efforts as we anticipate, the potential negative impact of the economy and jobs could wreck havoc politically for the Democrats in November. As always, NFDA will be extremely active in all these arenas protecting and advancing the interest of funeral service and small business.

### **1. LEGISLATIVE ISSUES.**

**Estate Tax (H.R. 4154).** In early December, the House passed H.R. 4154, sponsored by Rep. Pomeroy (D-ND) to make permanent the 2009 estate tax exemption and rate. However, due to the everlasting debate on health care reform that took them right up to Christmas eve, the Senate did not act on this bill. Consequently, as of January 1<sup>st</sup>, the federal estate tax is repealed at least until Congress acts otherwise or January 1<sup>st</sup> 2011 whichever comes first. Congressional aides have told NFDA that Congress, in early January, intends to pass a temporary extension of the current 2009 law for at least several months retroactive to January 1<sup>st</sup>. This will give them time to pass a permanent estate tax fix. Given this scenario, it is unclear what happens to an estate if an individual dies before the temporary law is passed even if it is retroactive. Moreover, an unintended tax consequence of total repeal could be that any assets that pass at death might be subject to a capital gains tax when sold. NFDA strongly supports a permanent fix for the estate tax and is supporting efforts by Senators Lincoln (D-AR) and Kyl (R-AZ) to amend H.R. 4154 when it gets to the Senate floor to increase the exclusion to \$5 million and reduce the rate to 45%. If that fails, NFDA would support passage of H.R. 4154 with an annual inflation adjustment. Stay tuned.

**Health Care Reform (H.R. 3962/H.R. 3590).** On December 23<sup>rd</sup>, the Senate finally passed their version of Health Care Reform by a vote of 60-39. The next step is for a Senate-House Conference Committee to meet and resolve the major difference in the two bills. They expect to begin that process in early January with hopes of getting a final bill to President Obama by his State of the Union speech in late January or early February. NFDA will provide a full analysis of the final bill as agreed on by the House

and Senate and sent to the President for signature. In the meantime, we have provided a comparison of the small business/employer provisions of the two bills in the attached separate document.

**Codification of SSI Irrevocable Funeral/Burial Trust Exemption. (S. 427/H.R. 1352).** We are still looking for appropriate legislative vehicles on which to attach our bill. The most recent effort by NFDA was to attach our bill to either the Omnibus Appropriations bill or the DOD Appropriations bill both of which passed late in December but we were unsuccessful. With the start of the 2<sup>nd</sup> Session in late January, we will again seek out viable legislative vehicles on which to attach our bill. Passage of these bills continues to be a high NFDA priority. NFDA members can send an e-mail to their members of Congress via Congress-at-a-click at [www.nfda.org](http://www.nfda.org) urging them to support H.R. 1352 and S. 427.

**Simplified Union Organizing Bills (S.560/H.R. 1409).** In spite of strong union support, there was no attempt to move either of these bills in 2009. They continue to be very controversial and many of the original supporters are now backing away from it. These are mainly conservative Democrats and those in Republican leaning districts. With 2010 being a critical election for Democrats, we expect a strong union lobbying effort with White House support to pass this bill next year. NFDA will continue to oppose it.

**Unclaimed Veterans Remains (H.R. 2642).** Another important issue for NFDA, we will continue to work with its sponsor, Rep. Pat Tiberi (R-OH), to get this bill passed and signed into law in 2010.

**Subchapter S Corporations (H.R. 2910/S. 996).** Introduced by Rep. Kind (D-WI) and Senator Lincoln (D-AR), these bills would modernize the current outdated Subchapter S rules to make it easier to elect this corporate form, free up accumulated capital, attract new investors and utilize the value of appreciated property among other things. Since many NFDA members have indicated that they use this corporate form or would like to, we believe this legislation would be extremely helpful to those members. NFDA has joined with other business groups in support of these bills and will continue to work for their passage in 2010.

**Financial Product Safety Commission Act of 2009 (H.R. 3126)** – This bill would establish a federal consumer watchdog agency over all consumer financial products, services and those who offer them to the public. This may also include preneed trusts, state association Master Trusts and those who sell and manage them. The bill passed the House as part of another massive banking reform bill and will be considered by the Senate when they return in late January. It is still unclear whether this new federal agency would have the authority to regulate funeral trusts, master trusts or those who sell or manage them. NFDA will continue to address this issue with the Senate when it reconvenes in January.

**Bereaved Consumer's Bill of Rights Act of 2009 (H.R. 3655).** Rep. Rush (D-ILL) has introduced this bill in response to the Burr Oak Cemetery scandal that occurred in Illinois this year. It directs the FTC to initiate a federal rule that would regulate cemeteries and all sellers of funeral goods or services in much the same way the FTC Funeral Rule regulates funeral homes. NFDA strongly supports this bill and has indicated that to Chairman Rush in a recent letter. NFDA members can send an e-mail to their members of Congress via Congress-at-a-click at [www.nfda.org](http://www.nfda.org) urging them to co-sponsor and support H.R. 3655. NFDA has invited Chairman Rush to address our attendees at the 2010 Advocacy Summit to be held March 8-10 in Washington, DC.

**Indigent Funeral Expense Reimbursement Act of 2009 (H.R. 3809).** At NFDA's request, Representative Broun (R-GA) introduce legislation to allow a federal tax deduction of up to \$3,000 for unreimbursed expenses for each indigent funeral and/or burial a funeral home performs at the request of the state or local government. NFDA members can send an e-mail to their members of Congress via Congress-at-a-click at [www.nfda.org](http://www.nfda.org) urging them to co-sponsor and support H.R. 3809. In addition, NFDA is working with NFDA member Rep. Charlie Wilson (D-OH) on another more targeted alternative which would be less generous but provide at least some relief for funeral homes who voluntarily provide these services to their communities.

## **2. REGULATORY ISSUES**

**Mass Fatality Management.** NFDA continues to work with key officials in the federal government with responsibility for disaster management to ensure that the role and responsibilities of funeral homes, cemeteries and crematories and all funeral service personnel, including industry suppliers are included in the National Response Framework or any mass fatality and family assistance plans that may be adopted. Recent meetings with HHS, DHS, NORTHCOM and various state officials have generated the first ever comprehensive draft federal mass fatality management document (FM CONOPS) dealing with the recovery of human remains, morgue operations, family assistance and final disposition which has been submitted to senior government officials at HHS for review and adoption. Suffice it to say, NFDA will continue to be active in this process to insure the interests of funeral service are properly represented. This is particularly important with the advent of the winter flu season and the estimated additional 90,000 deaths that are expected from the H1N1 flu virus in a brief 3-4 month period. In addition, NFDA continues to develop its own mass disaster plan to insure operational continuity in case of a natural or man-made disaster event.

**Shipment of Human Remains by Commercial Air Carriers.** The implementation of the TSA "Known Shipper" rules that went into effect for funeral service on August 1<sup>st</sup> seems to have gone very smoothly. Thanks to NFDA's advocacy and educational efforts, very few problems have arisen since the rules became effective. We will continue to address unique situations that may arise from time to time with the airlines or TSA to insure our members can properly serve their families. We are now preparing for and working with TSA in developing the new 100% screening for all air cargo program, including human remains, which go into effect in August 2010. In that regard, TSA and airline officials will brief attendees on the requirements of this new program at the NFDA Advocacy Summit in March 2010 in Washington, DC.

**Formaldehyde.** We continue to monitor the international, federal and state regulatory landscape for any signs of interest or action on limiting the use of formaldehyde for embalming purposes and several interesting developments have recently occurred.

First, the NCI study on formaldehyde exposure and embalmers was published in late fall 2009. NFDA is analyzing the report and will present its analysis in early 2010. A preliminary analysis has already been published in the NFDA Bulletin and Director.

Second, the International Agency for Research on Cancer (IARC) has declared formaldehyde a carcinogen.

Third, the federal Environmental Protection Agency (EPA) is undergoing a review of the National Toxicology program and the possible link between formaldehyde exposure and leukemia.

In the meantime, NFDA has developed talking points and other materials for our members, the press, public and other audience to address the NCI study as well as these other proceedings surrounding formaldehyde. Also, all information on these studies and related materials have been posted on the NFDA website at [www.nfda.org](http://www.nfda.org).

Fourth, our ventilation study is almost completed. We expect to have a full report by early 2010. We anticipate this to be a very valuable document for our members to use to evaluate and upgrade where necessary their prep room ventilation systems to insure they are providing the maximum protection for embalmers from formaldehyde exposure during embalming.

Fifth, we anticipate that both EPA and OSHA will propose some sort of regulations in the next year significantly limiting the use and exposure limits for formaldehyde based on all these studies. NFDA will be actively engaged in that process on behalf of funeral service.

**OSHA** - On December 16<sup>th</sup> President Obama signed the Fiscal Year 2010 Consolidated Appropriations Bill that provides \$558.6 Million for the Occupational Safety & Health Administration which is an increase over the 2009 Budget of \$513 Million. Of this amount, \$223.4 Million has been earmarked for Federal Enforcement and \$19.6 Million for Safety & Health Standards development. The American Society of Safety Engineers (ASSE) has been quoted as indicating that “this significant increase over the current budget should give OSHA enough resources in the current overall economic picture to raise the compliance bar . . .” Also on December 10<sup>th</sup>, David Michaels, the new head of OSHA, was quoted as stating that streamlining the rulemaking process and expediting the process for setting health exposure limits for hazardous chemicals are his two top priorities. On the same date, Jordan Barab, deputy head of OSHA indicated that the standard setting process currently takes 5 to 10 years and “that’s no way to run a worker protection agency.” According to Barab, the system, to set permissible exposure limits for hazardous chemicals, is broken and that OSHA intends to work with the Department of Labor and with the White House Office of Management and Budget to expedite the process for rulemaking and standards setting. NFDA expects that OSHA will be very active in 2010 and we will advocate for funeral service when and where necessary.

