

# **BACKGROUND PAPER FOR THE CEMETERY AND FUNERAL BUREAU**

**Joint Oversight Hearing, March 18, 2015**

**Senate Committee on Business, Professions and Economic Development  
and  
Assembly Committee on Business and Professions**

## **BRIEF OVERVIEW OF THE CEMETERY AND FUNERAL BUREAU**

The Cemetery and Funeral Program was formally established under the Department of Consumer Affairs (DCA) in 1996 as a result of AB 910 (Speier, Chapter 381, Statutes of 1995), and in 2000, the Program officially became known as the Cemetery and Funeral Bureau (Bureau). Prior to regulation as a Bureau, cemetery and funeral issues were handled by two separate entities, the California State Board of Funeral Directors and Embalmers and the California State Cemetery Board, which were created in 1939 and 1949, respectively. In the 1990s, turmoil within the Board of Funeral Directors and Embalmers and the Cemetery Board led to significant discussion within the Legislature regarding the effectiveness of the two separate entities. In 1995, agreement was reached with industry members on legislation to merge the two Boards into a single Board. However, that legislation was derailed by the discovery in Southern California of what appeared to be serious crimes committed at various cemeteries under the Cemetery Board's jurisdiction. The alleged crimes, which included fraud, embezzlement of endowment care trust funds, the mishandling of human remains, and the recycling of grave sites, brought crisis to the state's cemetery industry and overwhelmed the Board. Urgency legislation transferred the regulatory operations of both Boards to the DCA in January of 1996. Ultimately, the Legislature determined that the DCA was the best structure for managing the Programs, and through a memorandum of understanding with the Cemetery Board, the DCA assumed responsibility for the Cemetery Program in October 1995. The DCA was vested with all of the duties, powers, purpose, responsibilities, and jurisdiction of both the Cemetery Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the Cemetery and Funeral Bureau. This is the Bureau's second sunset review.

The Bureau licenses and regulates more than 11,000 licensees in 13 different licensing categories. The Bureau does not license or regulate cemeteries operated by religious organizations, cities, counties, cemetery districts, the military, Native American tribal organizations, or other groups. The number of license holders, as of November 1, 2014 is identified below.

## License Holders

		FY 2010–11	FY 2011–12	FY 2012–13	FY 2013–14
Funeral Establishment	Active	974	991	1,006	1,021
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	9	9	12	17
Funeral Director	Active	2,162	2,188	2,210	2,249
	Out-of-State	99	106	100	108
	Out-of-Country	1	1	3	2
	Delinquent	428	448	457	471
Embalmer	Active	1,766	1,743	1,695	1,645
	Out-of-State	197	203	185	175
	Out-of-Country	3	3	5	5
	Delinquent	336	317	333	348
Apprentice Embalmer	Active	279	259	260	262
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	0	0	0	0
Certificate of Authority (Cemetery) private non-religious cemeteries established after 1939 which collect endowment care funds	Active	188	191	194	196
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	1	0	1	0
Crematory	Active	207	215	223	227
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	2	0	0	0
Cemetery Manager	Active	289	282	284	282
	Out-of-State	6	7	6	8
	Out-of-Country	0	0	0	0
	Delinquent	67	73	70	169
Crematory Manager	Active	453	462	472	469
	Out-of-State	9	14	12	14
	Out-of-Country	0	0	0	0
	Delinquent	92	95	91	98
Cemetery Broker	Active	168	173	175	182
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	2	4	6	8
Cemetery Branch Broker	Active	85	77	72	68
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	3	14	15	15
Cemetery Broker Additional	Active	15	13	13	14
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	0	1	1	1
Cemetery Salesperson	Active	2,997	3,393	3,793	3,811
	Out-of-State	0	0	0	1
	Out-of-Country	0	0	0	0

	Delinquent	289	232	238	479
Cremated Remains Disposer	Active	155	159	163	138
	Out-of-State	0	0	0	0
	Out-of-Country	0	0	0	0
	Delinquent	102	93	58	89

Each profession has its own scope of practice, entry-level requirements, and professional settings.

- **Funeral Establishment** – a place of business devoted exclusively to those activities related to the preparation and arrangements, financial and otherwise, for the funeral, transportation, burial or other disposition of human remains.
- **Funeral Director** – a person engaged in preparing for transportation or burial, or disposal of human remains and maintaining an establishment for the preparation, transportation, disposition, or care of the human remains.
- **Embalmer** – a person qualified to disinfect or preserve human remains by injection or external application of antiseptics, disinfectants, or preservative fluids. In addition, embalmers prepare human bodies for transportation.
- **Apprentice Embalmer** – a person engaged in the study of embalming under the instruction and supervision of a licensed embalmer.
- **Cemetery** – a place where human remains are interred.
- **Crematory** – a place where human remains are cremated.
- **Cemetery Manager** – a person engaged in the maintenance, operation, or improvement of a licensed cemetery, the interment of human remains, and the preservation and embellishment of cemetery property.
- **Crematory Manager** – a person engaged in the maintenance or operation of a licensed crematory and in the cremation of human remains.
- **Cemetery Broker** – a person who sells cemetery property or interment services in a cemetery and employs cemetery salespeople.
- **Cemetery Branch Broker/Broker Additional** – a person who sells cemetery property or interment services from a branch location or who works at more than one location in a cemetery and employs cemetery salesperson(s).
- **Cemetery Salesperson** – a person employed by a cemetery broker to sell, offer for sale, list, buy, lease, solicit, or negotiate the purchase, sale, lease, or exchange of cemetery property or interment services.
- **Cremated Remains Disposer** – a person who disposes or, or offers to dispose of, cremated remains by scattering over land or sea.

The Bureau's mandate includes making protection of the public its highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is paramount (Business and Professions Code (BPC) § 7601.1).

The current mission statement of the Bureau, as stated in its 2015-2018 Strategic Plan, is:

***"The Cemetery and Funeral Bureau advocates consumer protection and licensee compliance through proactive education and consistent interpretation and application of the laws governing the death care industry."***

The Bureau has the oversight responsibility for both fiduciary and operational activities of its licensing population. The Bureau has statutory authority to enforce the licensing and practice acts in the BPC along with jurisdiction over specified provisions of the Health and Safety Code (HSC) dealing specifically with human remains, cemetery, and crematory provisions. With respect to the financial aspect of the industry, the Bureau is responsible for the oversight and regulation of preneed funeral trust funds, cemetery endowment care trust funds, and cemetery special care trust funds. With respect to the sale of insurance policies used to fund preneed funeral arrangements, the Department of Insurance (DOI) regulates the sales of such policies while the Bureau ensures compliance with price disclosures and contract requirements under the Bureau's jurisdiction.

### **Advisory Committee**

The Bureau does not have a "board" but has established an Advisory Committee. The seven-member Advisory Committee is comprised of industry representatives and public members. The Advisory Committee holds two public meetings annually which provide an opportunity for both consumers and licensees to contribute information and provide professional and technical information to the Bureau on industry-related matters.

Advisory Committee members are appointed for a two-year term and are eligible for an additional 2-year term. Four members are selected from the industry and three members represent the public. The Bureau Chief is responsible for selecting and appointing committee members upon the approval of the Director of the DCA. Advisory Committee members are volunteers, who serve at their own expense, in an advisory capacity, and make only nonbinding recommendations directly to the Bureau Chief. Because the Advisory Committee has no decision making authority and is not involved in disciplinary activities, a quorum deficiency does not impact required actions by the Bureau. The Advisory Committee has not had to cancel any meetings within the past two-years due to a lack of quorum.

The Bureau reports that it has begun to webcast its Advisory Committee meetings when equipment and facilities are available. Announcements and meeting agenda are posted on the Bureau's website a minimum of 10 days before a meeting. The Bureau also sends an e-mail to interested parties on its ListServ with the meeting details and the agenda. Meetings are typically held twice a year, but the schedule can vary based on agenda items, workload, and committee member availability.

<b>Advisory Committee Roster as of July 2014</b>	<b>Appointment Date</b>	<b>Term Expiration Date</b>	<b>Appointing Authority</b>
<b>Jolena Grande (Professional)</b> Professor, Mortuary Science Program, Cypress College Funeral Director, Embalmer, Crematory Manager	04/01/2013	03/30/2015	Bureau Chief
<b>Terry DeWeese (Professional)</b> General Manager, Sunset Lawn Chapel of the Chimes Funeral Director, Cemetery Manager, Cemetery Broker, Crematory Manager	04/01/2015	03/30/2015	Bureau Chief
<b>Darin Drabing (Professional)</b> President and CEO of Forest Lawn Memorial Parks & Mortuaries Funeral Director, Embalmer, Cemetery Manager, Cemetery Broker	04/01/2015	03/30/2015	Bureau Chief
<b>John Resich (Professional)</b> Corporate Officer, Green Hills Memorial Park Cemetery Salesperson	03/30/2011	03/30/2015	Bureau Chief
<b>Tracy Hughes (Public)</b> Office of the District Attorney, Orange County, Consumer Protection Unit	04/01/2013	03/30/2015	Bureau Chief
<b>Victoria Emmons (Public)</b> CEO, HOPE Hospice, Inc.	04/01/2013	03/30/2015	Bureau Chief
<b>Cheryll Moore (Public)</b> Professor of Gerontology, Los Rios College District Funeral Consumers Alliance of Northern California	03/30/2011	03/30/2015	Bureau Chief

### **Staffing Levels**

The Bureau Chief is appointed by the Director of the DCA. There has been significant turnover in Bureau leadership. Since 2000, the Bureau has had five different Bureau Chiefs. The current Bureau Chief was appointed in 2012.

The Bureau currently has 21.5 full and part-time positions and reports that it has not had a problem with recruitment or retention issues. The Bureau employs nine field investigators who are responsible for routine inspections of funeral establishments, cemeteries, crematories, and cremated remains disposers to ensure compliance with the Cemetery Act and the Funeral Directors and Embalmers Law. Once an inspection is complete, copies of inspection reports are sent to the Enforcement Unit at the Bureau. The Bureau's enforcement staff and not its field investigators are responsible for determining and administering any enforcement related actions.

The Bureau has two staff members who are dedicated to processing applications for licensure. One analyst is dedicated to evaluating and processing the applications for personal licenses, such as funeral director, embalmer, apprentice embalmer, cemetery/crematory manager, cremated remains disposer, and cemetery broker/salesperson. The second analyst evaluates and processes the business applications, consisting of Certificates of Authority (cemetery licenses), funeral establishments, and crematories. Additionally, this analyst processes all the applications and forms related to the activity associated with the business licenses, such as notifications of change of manager/trustee/corporate officer, changes-of-location, designation of cemetery or crematory managers (referred to as “maintenance” applications).

## *Auditors*

The Bureau hires auditors who have the responsibility to investigate and review books and records pertaining to preneed funeral trust funds, cemetery endowment care funds, and cemetery special trust funds. The Bureau may audit trust funds to ensure compliance with the laws, verify accounting and investing practices, and identify funding shortages. Audits may be initiated based on the review of an annual trust fund report, failure to file a trust report, consumer complaints, or for any reason if the funds appear to be at risk of possible abuse or noncompliance. Auditors are required to complete continuing education coursework which is only offered by an outside vendor. Currently the Bureau employs six individuals in its auditing unit.

At this time the Bureau has not requested any additional budget change proposals (BCPs) for staff increases with respect to its licensing, auditing, inspection, or enforcement units.

## **Fiscal and Fund Analysis**

Although the Bureau operates as a single regulatory entity, it is comprised of two separate special funds, the Cemetery Fund (Cemetery) and the Funeral Directors and Embalmers Fund (Funeral). Because each fund is administered separately, the fund conditions vary including the amounts of reserve in each fund, statutorily established fees for each licensing category, and the operating and personnel expenses for each fund. The fee range for each licensure category is set in statute and the Bureau may not raise fees above the statutory cap level without legislative approval.

There is no mandated reserve level for the Bureau; however, the DCA Budget Office has historically recommended that smaller programs maintain a contingency fund slightly above the standard three to six months of reserve. Maintaining an adequate reserve of at least six months provides for a reasonable contingency fund so that the Bureau has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs.

## *The Cemetery Fund*

At the end of Fiscal Year (FY) 2013-14, the Bureau reported that the Cemetery Fund had a reserve balance of 13.1 months. The Bureau states that according to BPC § 128.5(a), they are not permitted to exceed 24.0 months in reserve. The Bureau does not anticipate deficits in the Cemetery Fund.

<b>Cemetery Fund Condition</b>						
(Dollars in Thousands)	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Beginning Balance	\$1,918	\$2,201	\$2,374	\$2,608	\$2,702	\$2,487
Revenues and Transfers	\$2,166	\$2,141	\$2,205	\$2,296	\$2,269	\$2,269
<b>Total Revenue</b>	\$4,084	\$4,342	\$4,579	\$4,905	\$4,971	\$4,756
Budget Authority	\$2,479	\$2,534	\$2,537	\$2,513	\$2,484	\$2,534
Expenditures	\$1,886	\$1,987	\$1,971	\$2,203	\$2,484	\$2,534
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid from General	\$0	\$0	\$0	\$0	\$0	\$0

Fund						
<b>Fund Balance</b>	\$2,198	\$2,355	\$2,608	\$2,702	\$2,487	\$2,222
<b>Months in Reserve</b>	13.3	14.3	12.4	13.1	11.8	10.3

*This table was taken from the Bureau's 2014 Sunset Review Report.*

The fee schedule for the Cemetery Fund is complex, as revenues are derived from nine of the Bureau's 13 licensing categories. There is no history of General Fund (GF) loans from the Cemetery Fund.

### ***Funeral Fund***

At the end of FY 2013-14, the Bureau reported that the Funeral Fund reserve balance was 7.7 months; however, the Bureau projects the Funeral Fund to fall below a 3.0 reserve in FY 2015-16.

<b>Funeral Directors and Embalmers Fund Condition</b>						
(Dollars in Thousands)	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Beginning Balance	\$2,262	\$1,953	\$1,769	\$1,658	\$1,192	\$633
Revenues and Transfers	\$1,251	\$1,261	\$1,268	\$1,320	\$1,304	\$1,302
<b>Total Revenue</b>	\$3,513	\$3,214	\$3,037	\$2,978	\$2,496	\$1,935
Budget Authority	\$1,626	\$1,693	\$1,740	\$1,822	\$1,863	\$1,863
Expenditures	\$1,579	\$1,435	\$1,385	\$1,768	\$1,863	\$1,863
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid from General Fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Fund Balance</b>	\$1,934	\$1,779	\$1,652	\$1,192	\$633	\$35
<b>Months in Reserve</b>	16.2	15.4	10.9	7.7	4.0	0.2

*This table was taken from the Bureau's 2014 Sunset Review Report.*

Revenue for the Funeral Fund is derived from the fees of four of its thirteen licensing categories. There is no history of GF loans from the Funeral Fund.

According to the Bureau, there has not been a statutorily-approved fee increase for licensees, registrations, or renewals within the last 10 years for either fund. Currently, all but three of the Bureau's licensing categories are at the statutory fee cap.

### ***Expenditures by Program Component:***

***Cemetery Fund***—during the last four FYs, the Bureau has spent approximately 36% of its budget on enforcement, between 22-24% on auditing, 6% on licensing, 16% on administration, and between 18-21% on DCA pro rata. The past FY saw a 3% increase in DCA pro rata costs from previous FYs.

***Funeral Fund***—during the last four FYs, the Bureau has spent approximately between 65-69% on enforcement, 6-9% on licensing, 7% on administration, and between 17-22% on DCA pro rata costs.

## Licensing

As of February 1, 2015, the Bureau reports that its licensing population is approximately 11,700 with hundreds of those being delinquent licensees. The licensing population has seen little change within the past four FYs, however, the Bureau reports it has seen a slight increase over the last three FYs with respect to the number applications received. The largest increase in licensing population is that of cemetery salespersons. Since FY 2010-11, the number of licensed cemetery salespersons has increased by 814 licensees or 27% of that licensing population.

The Licensing Program of the Bureau provides public protection by ensuring licenses or certificates are issued only to those applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would be grounds for denial. The Bureau states that the Licensing Program's primary goal is to "in an efficient manner, register and license funeral establishments, funeral directors, embalmers, apprentice embalmers, private cemeteries, crematories, cemetery brokers and salespersons, cemetery and crematory managers, and cremated remains disposers in California." In addition, the Bureau's Licensing Program is responsible for processing manager, officer, and trustee changes, name and address changes, changes of location for funeral establishments, and duplicate license requests.

According to the Bureau, most of the applications received are reviewed within five to seven business days of receipt. When necessary, applications are forwarded to the Bureau's Enforcement Unit or Audit Unit for review and approval based on the type of application received. The typical turnaround time for review by each of those units is two days. Deficiency letters are issued in a timely manner, and completed applications continue through the process for an inspection and/or license issuance.

Although the Bureau does not track separate cycle times for completed and incomplete applications, it can identify total cycle times for *all* applications received. As reflected in the table below, the number of new applications has slightly increased over the last three FYs. The overall cycle times reflect minimal variances in the total processing time for the majority of applications received. The average time to process applications has been slightly reduced for most license types, while some license types reflect minimal increases in processing times.

The Bureau's licensing requirements are the same for out-of-state and out-of-country applicants.

The Bureau requires primary source documentation for any educational transcripts, experience records, license verification from other states, and professional certifications.

Only two of the Bureau's licensed entities require specified education:

- An applicant for a funeral director license must possess an associate of arts or science degree or the equivalent, or higher education as recognized by the Western Association of Colleges and Universities and,
- An applicant for an embalmer license must be a graduate of a mortuary science program approved by the Bureau and accredited by the American Board of Funeral Service Education and complete a two-year apprenticeship. If the applicant has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and their license has never been suspended or



revoked for unethical conduct, they are not required to serve an apprenticeship in California.

### ***Licensure Examinations***

The Bureau requires an examination for five of its 13 licensed categories:

- The funeral director examination consists of 100 multiple-choice questions in major content areas such as funeral arrangements, contracts, and administration.
- The embalmer examination consists of a two-part National Board Examination—NBE Arts and NBE Sciences. Each section is 170 multiple-choice questions. Applicants are required to take this examination in order to graduate from a mortuary science program. For California’s licensing requirements, applicants are only required to pass the NBE Sciences (embalming) section. Additionally, applicants must pass a California-specific examination consisting of 50 multiple-choice questions on the State’s laws, rules, and regulations.
- The cemetery broker examination consists of 100 multiple-choice questions in major content areas such as sales, interment, and broker management.
- The cemetery manager examination consists of 100 multiple-choice questions in major content areas such as contracts, interment rights, care funds, disposition and interment, disinterment, cemetery operations, and recordkeeping and reporting.
- The crematory manager examination consists of 75 multiple-choice questions in major content areas such as preparation, cremation, managements, and release and disposal procedures.

The Bureau reports that all of the multiple-choice licensing examinations, with the exception of the Embalmer's national examination, are developed using industry Subject Matter Experts in cooperation with the DCA's Office of Professional Examination Services. The Bureau utilizes computer-based testing. The examinations are routinely available throughout California, six-days a week. Scores are electronically submitted to the Bureau and test-takers find out immediately if they passed. Testing sites are located in Anaheim, Atascadero, Bakersfield, Carson, El Monte, Fresno, Hayward, Redding, Riverside, Sacramento, San Diego, Santa Rosa, Santa Clara, Ventura, Visalia, and Walnut Creek.

As part of the licensing process, all applicants are required to submit fingerprint images in order to obtain criminal history background checks from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). The Bureau is not aware of any licensees that have not been fingerprinted. There is no national disciplinary database which tracks disciplinary actions of the Bureau's licensing populations. The Bureau will accept out-of-state and out-of-country applicants to submit fingerprint "hardcards" taken by a law enforcement agency for those applicants who cannot submit electronic fingerprints in California.

The Bureau requires applicants to disclose all prior criminal convictions and administrative discipline as part of the application process. Those applicants who respond “yes” to the conviction question on the application are required to submit additional information which includes the type of violation, the

date, circumstances and location, and the complete penalty received. In addition, they are instructed to include copies of court documents, arrest records, verification of restitution received by the court, and verification of successful completion of probation. Those applicants who respond “yes” to the administrative discipline question are instructed to attach an explanation that includes the license type, the action taken, by what state, the date, and a copy of the administrative action.

### **Continuing Education**

Continuing education is not required for any of the Bureau's licensing entities. However, the Bureau reports that there are numerous State and national associations that provide a variety of training to Bureau licensees, applicants, and nonlicensed individuals working in the industry. While the Bureau does not require continuing education, there are several statutes that require non-licensed individuals, working in a funeral establishment or crematory, to receive documented training in specific areas. BPC § 7635 requires any person employed by, or an agent of, a licensed funeral establishment, who meets with families of decedents to arrange services, as specified in BPC § 7615(a), to receive training and instruction which results in a demonstrated knowledge of all applicable federal and state laws, rules, and regulations pertaining to the duties of a funeral director. A written outline of the training program, including documented evidence of the training time, place, and participants, must be maintained in the funeral establishment and be available for inspection and comment by the Bureau's field investigator.

For individuals who are working as crematory operators in a licensed crematory, HSC § 8347(a) requires the crematory licensee, or his or her authorized representative, to provide instruction to all crematory personnel involved in the cremation process. The instruction must lead to a demonstrated knowledge on the part of the employee(s) regarding identification procedures used during cremation, operation of the cremation chamber and processing equipment and all laws relevant to the handling of a body and cremated remains. Additionally, the instruction must be outlined in a written plan and maintained by the crematory licensee for inspection and comment by the Bureau's field investigator.

The Bureau's field investigators monitor compliance with these requirements as part of the inspection process.

### **Military Experience**

BPC § 114.5 specifically requires each licensing entity under jurisdiction of the DCA, to inquire of every applicant for licensure if the individual applying for licensure is currently serving or has served in the military. The law took effect on January 1, 2015, and according to the Bureau, it is in the process of updating all applications to include a question about military status in order to better identify and assist active military members and veterans applying for professional licensure. Additionally, information is available on the Bureau's website under the "Licensing Application" link, which provides those statutory provisions (BPC §§ 114.3, 115.5), that are currently available to military personnel or their spouses. According to the Bureau's 2014 sunset report, as of November 2014, the Bureau had not received any applications requesting consideration of military training, education, or experience and the Bureau has only been requested to expedite one application for that of a funeral director for a military spouse.

In addition, BPC § 35 specifies that education, training, and experience obtained while in the armed services of the United States, may be used to meet the licensure requirements for a particular business,

occupation, or profession regulated by the DCA. The Bureau reports that it currently does not have specific statutes, rules, or regulations for accepting military credit for veterans. The minimum qualifications for a cemetery broker, cemetery manager, and funeral director have provisions which authorize the Bureau the discretion to accept military experience or education that meets certain conditions. The required two years of cemetery experience, obtained by a veteran working in a Federal or veteran cemetery, may be accepted as meeting the requirement for licensure as a cemetery broker or cemetery manager.

The Bureau also has several licenses that require little or no experience or education requirements: cemetery salesperson, cremated remains disposer, crematory manager, and apprentice embalmers.

With regard to embalmers, the only branch of the military that uses authorized uniformed embalmers is the Navy, which recruits individuals who are already licensed in one of the 50 states and who have already passed the national examination. A veteran may use experience he or she gained in the Navy toward licensure in California (i.e., experience in lieu of the required apprenticeship).

### **Enforcement**

The Bureau reports that performance measures for enforcement activities are determined by the DCA as part of the Consumer Protection Enforcement Initiative (CPEI) and stress timely response to consumers and swift disciplinary action when licensees are in violation of the laws. Consumers may file complaints by telephone, online, and in writing. Depending on the severity of the case, complaints are assigned either to one of the DCA's mediation centers or the Bureau's field investigation unit.

The Bureau reports that during the last three FYs, it has consistently met its target timeframes in the areas of complaint intake and investigations. Complaints are assigned upon receipt, and investigations not resulting in disciplinary action are averaging less than the target timeframe of 120 days, from receipt until completion and closure.

### **Enforcement Timeframes**

The Bureau's target timeframe for completing formal disciplinary actions, as defined in the CPEI, is 540 days from the date the investigation is opened to the date of the final disciplinary order or other action. The Bureau reports that it took an average of 555 days in FY 2011–12, an average of 582 days in FY 2012–13, and an average of 396 days in FY 2013–14 to complete a case from the time the complaint was received until the matter was adjudicated.

The Bureau reports two cases in FY 2012–13 which exceeded the target timeframe. One case was reopened for subsequent discipline, which aged the case from the date it was originally opened through completion of the subsequent discipline. In order to avoid this situation in the future, the Bureau no longer reopens original cases, but instead opens new cases for subsequent disciplines. The second case involved the reassignment of the Deputy AG, a hearing continuance, a delay in the Proposed Decision, and a Writ of Mandate. This case remains pending.

The table below identifies the actual formal disciplinary actions taken by the Bureau in the past three years.

<b>Enforcement Statistics</b> (reflected in days)			
	FY 2011–12	FY 2012–13	FY 2013–14
<b>DISCIPLINE</b>			
Disciplinary Actions			
Proposed/Default Decisions	12	7	16
Stipulations	4	7	5
Average Days to Complete	555	582	396
AG Cases Initiated	11	23	21
AG Cases Pending (close of FY)	19	25	19
<b>Disciplinary Outcomes</b>			
Revocation	9	16	17
Voluntary Surrender	2	6	2
Suspension	0	2	0
Probation with Suspension	0	0	0
Probation	3	3	5
Probationary License Issued	0	1	0
Other	0	0	0
<b>PROBATION</b>			
New Probationers	3	6	4
Probations Successfully Completed	1	3	3
Probationers (close of FY)	5	10	14
Petitions to Revoke Probation	0	1	2
Probations Revoked	1	1	0
Probations Modified	0	0	1
Probations Extended	0	0	2
Probationers Subject to Drug Testing	N/A	N/A	N/A
Drug Tests Ordered	N/A	N/A	N/A
Positive Drug Tests	N/A	N/A	N/A
Petition for Reinstatement Granted	0	1	0

*This table was taken from the Bureau's 2014 Sunset Review Report.*

### ***Statute of Limitations***

The Bureau's statutes of limitations are set in statute and based upon the license type. The Funeral Directors and Embalmers Law (BPC § 7686.5) specifies that the Bureau has two years from the occurrence of, or three years after the discovery of fraud or misrepresentation of, an alleged act, which is grounds for disciplinary action to file an accusation. The Cemetery Act (BPC § 9726) specifies that the Bureau has three years from the occurrence of an alleged act to file an accusation. Further, BPC § 9727.1 authorizes the Bureau to suspend or revoke a license obtained by fraud, misrepresentation, or deceit three years from discovery of that violation.

The Bureau reports that it has not lost any cases due to technicalities associated with exceeding the statutes of limitation.

Since the Bureau's last sunset review in 2002, there has been an increase in the number of administrative actions, license revocations, and the issuance of citations. During the same period of time, staffing levels for field investigators has also increased.

The Bureau assigns complaints as they are received and are prioritized based on DCA's Complaint Prioritization Guidelines. Time sensitive complaints such as those impacting pending cremations or burials or failure to release a body are of the highest priority.

External entities, such as law enforcement agencies, civil courts, or other professionals, are not statutorily required to provide notifications of violations related to any of the Bureau's licensing population.

***Cite and Fine***

The Bureau utilizes cite and fine authority. However, the Bureau reports that it practices “progressive discipline” in an attempt to bring licensees into compliance with the laws and regulations. Therefore, most initial violations are given a warning prior to a citation being issued, giving the licensee time to execute corrective action. If a licensee fails to correct the violation or if the initial finding of the violation(s) is egregious, the Bureau will proceed with issuing an administrative citation. The citation and the amount of the fine depend on the type and extent of the violation, along with the enforcement history of the licensee. The Bureau has amended the funeral regulations, 16 CCR §§ 1240, 1241, 1242, and 1246, to allow the ability to issue an administrative citation for violation of any of the funeral laws or regulations and incorporate the increased maximum fine amount of \$5,000. Those regulations became operative on October 1, 2014. The Bureau reports that it is in the process of amending the cemetery regulations 16 CCR §§ 2382–2388 to allow the ability to issue an administrative citation for violation of any of the cemetery laws or regulations and incorporate the increased maximum fine amount of \$5,000. The proposed language for these amendments was reviewed by the Bureau’s Advisory Committee during its July 2014 meeting.

Currently, with regard to cemetery law, the Bureau has the authority to issue administrative citations and assess monetary fines for specific violations identified in the CCR by class designation, ranging from \$50 to \$1,500.

Monetary fines assessed and collected:

<b>Fiscal Year</b>	<b>10–11</b>	<b>11–12</b>	<b>12–13</b>	<b>13–14</b>
Fines Assessed	\$86,766	\$96,753	\$75,297	\$83,697
Collected*	\$82,265	\$90,252	\$94,842	\$79,195
Percent Collected	95%	94%	86%	95%

*\* The amount collected may include fines assessed and paid for the current fiscal year and prior fiscal years.  
This table was taken from the Bureau's 2014 Sunset Review Report.*

The Bureau reports the following as the five most common violations (not ordered) for which the Bureau issues citations:

<b>Code/Section</b>	<b>Description</b>
16 CCR § 1258.1	Price ranges on the General Price List and Casket Price List do not match casket offerings on the Casket Price List
BPC § 7680	Failure to post all current/renewal licenses
BPC § 7685	Failure to include all caskets offered for sale on the Casket Price List
BPC § 7685.1	Missing or incorrect price information on casket price tags
BPC § 7077	Unprofessional conduct

*This table was taken from the Bureau's 2014 Sunset Review Report.*

The Bureau reports that it does not utilize the FTB intercept program to collect outstanding fines because the majority of the citations issued are to businesses, not individuals. The FTB program requires a Social Security number to intercept the funds. Further, the Bureau generally has an annual revolving unpaid outstanding fine balance of less than \$25,000, due to the fact that most licensees pay their fines at the time of licensee renewal and the fine is added to that amount in accordance with the provisions of BPC § 125.9.

The Bureau requests to recover costs for investigation and prosecution in disciplinary cases as a standard part of each administrative action that is sent to the AG, and costs are recovered to the fullest extent possible under BPC § 125.3.

### ***Licensure Revocation***

The Bureau's licensing population is unique in that it licenses both individuals and facilities, such as funeral establishments, embalmers, cemeteries, and cemetery managers. If an individual's license is revoked, that individual may no longer perform the duties defined under the scope of their license. Where challenges arise for the Bureau and consumers is with the revocation of a cemetery (facility) license. Unlike an individual license holder, who can immediately stop performing services, the grounds and care of a cemetery cannot be eliminated because a license has been revoked. The routine care and maintenance of cemetery grounds must continue. According to the Bureau, when a license is revoked, its jurisdiction over cemeteries remains only with regard to approving interments as specified in BPC § 9718 and 16 CCR § 2332. The Bureau's authorization is limited to allowing interments only for decedents who have a right of interment through a preneed contract. The Endowment Care Fund and Special Care Fund associated with that cemetery must remain as trust funds and can only be used for the purpose for which they were intended. In the event that a cemetery is sold, or otherwise organized or controlled by, a religious society or denomination, the Bureau has no jurisdiction over any of its activities, including interments and trust funds. Additionally, the owner of the land may still be subject to and responsible for complying with any local city, county or city and county, ordinances, laws, as specified in HSC § 8115.

## ***Complaint Disclosure***

The Bureau's complaint disclosure policy is consistent with the DCA's *Recommended Minimum Standards for Consumer Complaint Disclosure*. Accusations and disciplinary actions are posted on the Bureau's website upon service to the respondent and are included in the Bureau's biannual newsletter.

## **Requirements for Death Care Providers**

Funeral establishments and private cemeteries (those regulated by the Bureau) have an online presence and advertise their services and the merchandise they offer. California law requires explicit consumer disclosures, price lists, preneed trusting requirements, signatures on specific documents, and other obligations by licensees that are designed to protect consumers. Most often, consumers will make funeral and burial arrangements in person with a licensee. However, arrangements can be transacted by phone, e-mail, and fax as long as all of the required disclosures and documents are provided and a contract is signed.

The Bureau reports that it periodically discovers unlicensed practice through Internet advertising and takes swift action to gain compliance. The licensing population for funeral establishments is relatively small—about 1,050 current licensed locations—and competitive. When the occasional unlicensed location is identified by a licensee, the Bureau is quickly contacted and a complaint is initiated. In addition, the Bureau's nine field investigators, located throughout the State, are responsible for conducting inspections and investigations of licensed funeral establishments, cemeteries, and crematories. The Bureau reports that field investigators are assigned to specific geographic regions and are familiar with the licensing population in their respective areas.

BPC § 7685, requires funeral establishments that maintain a website to post their list of funeral goods and services that are required to be included in the establishment's General Price List (GPL), pursuant to the Funeral Rule, and a statement that the GPL is available upon request via a link from the home page, unless a phrase containing the word "price" links to the establishment's GPL. Part of the Bureau's inspection procedures include an online search to see if the funeral establishment maintains a website and, if so, if it is compliant with this provision. Searching the Internet allows the Bureau's field investigators to identify unlicensed locations, as well as those funeral establishments that are properly licensed.

## **Preneed and Industry Requirements**

The terms "preneed agreement" or "preneed" refer to a written instruction regarding goods or services or both goods and services for final disposition of human remains, when the goods or services are not provided until the time of death, and may be either unfunded or paid for in advance of need.

The Bureau has the authority and responsibility for the oversight of both the fiduciary and the operational activities of the industries. With regard to the financial aspect of the industry, the Bureau oversees preneed funeral trust funds, cemetery endowment care trust funds, and cemetery special care trust funds. The DOI regulates the sale of insurance policies that can be used to fund preneed funeral arrangements. However, sellers are required to meet the price disclosure and contract requirements under the Bureau's jurisdiction. The Bureau has the financial examination authority under BPC § 7737.3 to ensure compliance with the laws, verify accounting and investing practices, and identify

funding shortages. Audits may be initiated based upon the review of an annual trust report, failure to file a trust report or consumer complaints.

BPC § 7745 requires a funeral establishment to present to the survivor of the decedent or the responsible party a copy of any preneed agreement in its possession which has been signed and paid for in full, or in part by, or on behalf of the deceased. BPC § 7685.6 requires a copy of any preneed arrangements to be disclosed prior to drafting any contract for funeral goods or services. The funeral establishment may present the copy in person, by certified mail, or by facsimile transmission, as agreed upon by the person with the right to control disposition. A funeral establishment that knowingly fails to present a preneed agreement as required is liable for a civil fine equal to three times the cost of the preneed agreement, or \$1,000, whichever is greater.

## **Litigation**

The Bureau reports that it is currently engaged in the following pending litigation:

On April 18, 2011, the Bureau in conjunction with the DCA filed a civil suit against the Funeral Directors Service Corporation (FDSC) and others over alleged illegal activities uncovered, in part, by an audit and subsequent investigation of the California Master Trust (CMT) by the Bureau and the California Attorney General's (AG) office. As a result of the audit, the Bureau determined that CMT was not in compliance with several laws and regulations governing the administration of preneed funeral trust funds and that at least \$6 million should be returned to the trust.

The California Funeral Directors Association created FDSC, an Oregon-based for-profit corporation created to develop and administer the CMT program. The CMT program is designed to administer preneed contracts that individual funeral businesses enter into with customers. Preneed contracts are purchased by consumers, in order to make their funeral arrangements with a specific funeral establishment or funeral home in advance. These funeral establishments or funeral homes then contract with a professional trustee to make it easier for the funeral establishments or funeral homes as the trustee to manage the funds paid toward preneed contracts.

The first case was filed by a participating funeral establishment in an effort to compel the trustees to provide an accounting of the expenditures by the trustees of the funds deposited by it into the trust. The then Bureau Chief and the DCA formally intervened on behalf of consumers in this case in November 2009. After the Bureau's intervention was filed, the parties requested a continuance of the trial in this matter (*In the Matter of the California Master Trust*, Santa Clara County Superior Court, Case No. 109PR165181). On November 15, 2010, the DCA and the Bureau were sued by FDSC in an attempt by the FDSC to obtain injunctions preventing both agencies from taking any administrative actions against the CMT and affected funeral establishments (*Funeral Directors Service Corp. v. Dept. of Consumer Affairs, Cemetery and Funeral Bureau*, originally filed in Sacramento County Superior Court, Case No. 34-2010-80000715).

The lawsuit alleges that a significant portion of the consumers' money paid into the trust was being squandered, misspent, or mismanaged (*Cemetery and Funeral Bureau, Department of Consumer Affairs v. California Master Trust, et al.*, originally filed in Los Angeles County, Case No. BC459862).

To date, the Bureau has settled with all defendants and is in the process of selecting a successor trustee for approval by the court to replace the current trustee.



As of January 2015, the Bureau has expended approximately 1.2 million dollars in AG costs resulting from this litigation. These costs have been expended through the Funeral Fund.

## **PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS**

The Bureau was last reviewed in 2002, by the Joint Legislative Sunset Review Committee (JLSRC). During the previous sunset review, JLSRC raised 22 issues. Below are actions which have been taken over the last thirteen years to address a number of these. In November, 2014 the Bureau submitted its required sunset report to these Committees. In the report, the Bureau described actions it has taken since its prior review to address the recommendations of JLSRC. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under “Current Sunset Review Issues.” Items completed or pending based on recommendations from the JLSRC include the following:

- **Issue #1. Does the Bureau have explicit authority to conduct regular inspections of licensed cemeteries? If so, how are inspections conducted and does the Bureau have the appropriate staff needed to conduct cemetery inspections?**

*The Bureau reports that it implemented the requirements for annual inspections of licensed cemeteries and crematories in 2003 as a result of SB 17 (Figueroa, Chapter 819, Statutes of 2002).*

- **Issue #2. Does the Bureau comply with the requirement to examine endowment care funds and endowment care reports?**

*The Bureau states that it has the authority to examine cemetery endowment care funds whenever it deems necessary, or at least once every five years, whenever a cemetery fails to file the annual report, or whenever the accountant qualifies his or her certification of the report. Desk audits are conducted each year on the financial statements submitted by cemeteries, and field examinations are selected based on the risk identified in the desk audits.*

- **Issue #3. Why hasn't the Bureau complied with the requirement to provide a booklet which includes details about registrations, renewals and other requirements to cremated remains disposers?**

*The Cemetery and Funeral Bureau's publication, Cremated Remains Disposer Handbook, Complying with California Law, was last revised in January 2013 and is provided to all cremated remains disposers upon issuance of their registration.*

- **Issue #4. The \$8.50 cremation and interment fee expired on April 1, 2003.**

*The \$8.50 fee for each interment or cremation, which is collected from the applicable cemetery or crematory was reauthorized in 2008, as a result of AB 2946 (Hayashi), Chapter 504, Statutes of 2008. The fee was established with support of the industry to maintain the Bureau's solvency. This fee was enacted in 1996 to repay loans initiated for the cemetery task force and would have sunset April 1, 2003. SB 1952 (Figueroa), Chapter 825, Statutes of 2002 authorized the Bureau to continue to assess the \$8.50 cremation and interment fee only until 2007.*

- **Issue #5. Are the entry-level requirements for embalmers adequate and if so, what quality control measures has the Bureau implemented to ensure compliance with the apprentice embalmer term limits?**

*The Bureau reports that it closely monitors apprentice embalmers and that its inspection protocols for establishments includes questions directed at apprentice embalmers. The Bureau reports that since 2003, it has revoked nine apprentice embalmer registrations and has placed six on probation.*

- **Issue #6. Although the Bureau administers an examination for crematory managers and cemetery managers, the Bureau can neither charge a fee for the development and administration of the examination nor do they license or regulate these individuals.**

*The Bureau reports that it has statutory authority to collect examination, license, renewal, and delinquent renewal fees for cemetery and crematory managers.*

- **Issue #7. How does the Bureau interpret the law regarding fingerprints for background investigations?**

*The Bureau reports that it has implemented a fingerprint requirement for all applicants for licensure.*

- **Issue #8. Only applicants for a Certificate of Authority (cemeteries) were required to have a \$50,000 fidelity bond. Should this requirement be expanded to include funeral establishments and crematories?**

*The Bureau conducted a study in 2002 and concluded, "...it would appear the size of the \$50,000 bond is not sufficient to cover many losses to cemetery trust funds. When Bureau audits identify significant trust fund shortages, the losses are greater than the size of the bond in the vast majority of cases. The Bureau's administrative oversight in requiring any trust fund shortfalls to be fully funded has proven to be more effective than collecting on the fidelity bond."*

- **Issue #9. It is unclear whether the Bureau is complying with requirements to complete occupational analyses for cemetery examinations? In addition, it is unclear whether the funeral director's examination includes questions about trusts, fiduciary duties, contracts, or investments.**

*The Bureau reports that it conducts occupational analyses for each of its five licensing examinations every five to seven years.*

- **Issue #10. Does the funeral director's examination include questions about trusts, fiduciary duties, contracts or investments? Does the Bureau feel that this examination adequately checks the competency of the applicant?**

*The Bureau reports that it will begin a new occupational analysis of the funeral director practice in FY 2015-16. Based upon this study, the Bureau will further determine what revisions may be necessary to the examination plan and for further examination development.*

- **Issue #11. The greatest number of complaints involves allegations of contractual violations and unprofessional conduct. How can the Bureau help reduce the number of complaints and is the existing penalty structure sufficient?**

*The Bureau reports that it continues to receive complaints alleging unprofessional conduct (including violations concerning contracts) against some of its licensees and it's likely they will continue to receive those types of complaints, at least to some degree. Complaints alleging these types of violations can be complex and many times involve trust fund issues for preneed (preplanned) arrangements.*

*The Bureau has developed two publications to help educate consumers regarding preplanned arrangements: Preneed Q&A and For Peace of Mind . . . Funeral and Cemetery Arrangements. Both of these publications provide current information on planning in advance of need. The Bureau also publishes the Consumer Guide to Cemetery and Funeral Purchases which is designed to assist consumers with choices about funeral and cemetery arrangements for themselves or their loved ones. Additionally, the Bureau is creating a video message intended for consumers with tips and information regarding end-of-life planning. Finally, the Bureau's inspection process allows for educating licensees on the Bureau's laws and regulations. For egregious violations, the Bureau can issue administrative citations and/or initiate license discipline through the AG.*

- **Issue #12. It is unclear whether insurance agents are improperly engaging in unlicensed funeral activities or whether they are subject to comply with the preneed disclosure and trusting law.**

*The Bureau reported that it met with the DOI to clarify the areas of jurisdiction and establish contacts. The Bureau developed a preneed survey to use in connection with inspections to identify insurance companies and agents used by funeral establishments. The surveys were then forwarded to the DOI. Several years ago, the process was stopped at the request of the DOI. The Bureau continues to refer complaints involving insurance issues to the DOI.*

- **Issue #13. Does the Bureau comply with the law to annually inspect the operations of five to 10 percent of the registered cremains disposers?**

*The Bureau reports that over the past five FYs, the Bureau has consistently met its mandate to inspect (at a minimum) 5-10 percent of its licensed cremated remains disposers.*

- **Issue #14. The Bureau has statutory authority to charge a late renewal fee for every licensee except cemeteries and crematories.**

*As a result of SB 1952 (Figueroa, Chapter 825, Statutes of 2002), delinquent renewal fees are assessed for cemeteries, crematories, cemetery brokers, cemetery salespersons, and cremated remains disposers.*

- **Issue#15. Does the Bureau have a training program for its field investigators?**

*It is unclear how the Bureau addressed this issue.*

- **Issue #16. What is the Bureau's knowledge about the practice of convalescent homes and hospitals providing families of the deceased with information about a local funeral establishment or automatically transporting the deceased to a local funeral establishment?**

*Convalescent homes/hospitals generally do not have holding facilities (morgues) to hold decedents. It is common for these facilities to obtain the name of a funeral establishment from the family upon admittance. Hospitals, on the other hand, may only ask the family about a funeral establishment upon the patient's death. Larger hospitals may have morgues, while smaller hospitals may not and, instead, contract with a local funeral establishment to act as their morgue. Although a specific funeral establishment may act as a morgue, it does not necessarily mean that the funeral establishment will be the one to provide funeral services to the family. When the coroner has jurisdiction over the decedent, he/she may contract with funeral establishments to use their facilities to conduct autopsies and/or hold the decedents. Again, when the coroner releases the decedent to the family, it does not necessarily mean that the family will choose that particular funeral establishment for the services. Providing information about local funeral establishments to families may involve a simple list with telephone numbers, copies of price lists, or actually directing families to a particular funeral establishment.*

*BPC §§ 7716, 7718, and 7694 – 7697 prohibits licensees from “steering” business to a specific funeral establishment and/or receiving “kick-backs” for doing so, and documented violations are grounds for disciplinary action and/or a misdemeanor.*

- **Issue #17. What is the relationship between the licensed and unlicensed segments of the population? Is there a problem with third-party retailers?**

*As a result of SB 1952 (Figueroa, Chapter 825, Statutes of 2002), in 2004, the Bureau was required to complete a report to the former Joint Committee on Boards, Commissions, and Consumer Protection which examined the need to regulate third-party casket retailers. The Bureau's report concluded that it was unnecessary to regulate third-party retailers.*

- **Issue #18. Current law exempts individuals functioning as a cemetery broker, cemetery manager, or cemetery salesperson from licensure and regulation if he or she is an employee of a religious corporation, church, religious society, or denomination. Does the Bureau believe this exemption should be retained?**

*As a result of SB 1952 (Figueroa, Chapter 825, Statutes of 2002), in 2004, the Bureau was required to complete a report to the former Joint Committee on Boards, Commissions, and Consumer Protection, which examined the need to regulate proprietary employees of religious corporations, churches, religious societies, and religious denominations. The Bureau's report concluded that it had received very few complaints on this issue and determined that it was unnecessary.*

- **Issue #19. Is the Bureau aware of any reason to exempt cemeteries, crematories, cemetery brokers, cemetery salespersons, and funeral directors from the laws governing cremated remains disposers?**

*The Bureau reports that as a result of SB 17 (Figueroa), Chapter 819, Statutes of 2002, and SB 1952 (Figueroa, Chapter 819, Statutes of 2002), both cemetery and crematory managers are licensed and regulated by the Bureau.*

- **Issue #20. Consumer guide for funeral and cemetery purchases.**

*As a result of SB 1952 (Figueroa, Chapter 825, Statutes of 2002), both BPC §§ 7685.6 and 9663 specifies that the Bureau's Consumer Guide to Cemetery and Funeral Purchases must be provided to consumers prior to drafting a contract for cemetery goods or services or funeral services, the cemetery authority or licensee and funeral establishment is required to provide a copy of a Consumer Guide to Cemetery and Funeral Services.*

- **Issue #21. Is the Bureau utilizing Internet capabilities to improve services and provide better information to consumers?**

*The Bureau reports that in 2013, it updated and reorganized its website to be more user-friendly and to follow DCA's website format. The Bureau uses its public website to provide program-specific and general information to consumers, licensees, and interested parties, such as announcements about upcoming meetings and agendas. Using the Bureau website, consumers can verify the status of a license, access complaint reporting options, and download three consumer publications. Licensees can obtain information on licensing, inspections, audit forms, and the laws and regulations. The Bureau also creates and distributes a newsletter twice a year that is posted on its website.*

*Currently, Advisory Committee agendas and minutes are available dating back to 2005. However, the Bureau is currently working on website changes to archive the older material to an easily downloadable file on the website, and will continue to post the most recent meeting agendas and minutes. Additionally, the Bureau is working on creating a link to disciplinary actions so they can be accessed in one location by fiscal year, with the most recent actions posted and the ability to view prior years' actions by fiscal year. This is in addition to accessing disciplinary actions via the license verification feature on the website.*

*At the beginning of each year, the Bureau creates a summary of legislation and regulations that takes effect as of January 1. The summaries are posted on the website and include a brief description of what the change in the statute or regulation requires.*

- **Issue #22. Retail casket stores, and occasionally others, sell merchandise that, if sold by a licensed funeral director, would be subject to preneed sales requirements relating to certain contract, fiduciary, and reporting practices. Does the Bureau have authority to regulate casket retailers?**

*In 2002, as part of the recommendations of the JLSRC in response to the Bureau's prior Sunset Review, the Bureau conducted a comprehensive study to determine the feasibility/necessity of oversight for third-party casket retailers. The Bureau reported that based on its research, the*

*Bureau will continue to monitor casket-retailer complaints received by local District Attorney's Offices. (In addition, if and when trends are detected, the Bureau may recommend regulations.)*

### **Major changes noted by the Bureau:**

According to the Bureau, the following are some of the more important programmatic and operational changes, enhancements, and other important policy decisions or regulatory changes made:

- In 2005, the Bureau relocated from 400 R Street, Sacramento, CA 95811 to its current location at 1625 N. Market Boulevard, Suite S-208, Sacramento, CA 95834.
- Implemented the provisions of legislation that required the licensing of all cemetery and crematory managers and established licensing standards through regulation for the new licensing categories.
- Enacted consumer protection regulations that require funeral establishments to disclose to the responsible party any preneed funeral arrangement they have on file for the decedent
- Conducted a survey to determine the adequacy of cemetery endowment care fees collected by licensed cemeteries.
- Implemented annual inspections of licensed cemeteries and crematories.
- Began publishing a newsletter, which is posted on the Bureau's Website.
- Developed the publication, *Preneed Q&A*, which includes the most frequently asked questions about purchasing *preneed* funeral merchandise and services.
- Began computer-based testing for all five licensing examinations given by the Bureau.
- Implemented procedural changes to enforcement processes and established target timeframes to better track and reduce the amount of time it takes to complete field investigations.
- Began a comprehensive review of the cemetery and funeral regulations to identify necessary changes to streamline enforcement processes and enhance consumer protection.
- Adopted a 2015-2018 Strategic Plan.

For more detailed information regarding the responsibilities, operation and functions of the Bureau, please refer to the Bureau's "Sunset Review Report 2014." This report is available on its website at [http://www.cfb.ca.gov/about\\_us/sunsetreview\\_2014.pdf](http://www.cfb.ca.gov/about_us/sunsetreview_2014.pdf).

## **CURRENT SUNSET REVIEW ISSUES FOR THE CEMETERY AND FUNERAL BUREAU**

The following are unresolved issues pertaining to the Bureau, or those which were not previously addressed by the JLSRC, and other areas of concern for these Committees to consider, along with background information concerning the particular issue. There are also recommendations the Business and Professions Committee staff have made regarding particular issues or problem areas which need to be addressed. The Bureau and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

## **BUDGET ISSUES**

### **ISSUE #1: LONG TERM FUND CONDITION. *Should the Bureau Consider Merging its two Funds?***

**Background:** In the 2014 sunset review report, the Bureau stated that it projects a steady decline in the reserve levels of both the Cemetery Fund and the Funeral Directors and Embalmers Fund. In FY 2013-14 the Cemetery fund reserve level was 13.1 months, in FY 2014-15, the reserve is 11.8 months, and in FY 2015-16 the fund is projected to go down to 10.3 months. In regards to the Funeral Directors and Embalmers Fund, the Bureau reports a projected decline below 3.0 months of reserve in FY 2015-16. In FY 2013-14 the reserve fund was 7.7 months, in FY 2014-15, it was 4.0 months, and in FY 2015-16, it is projected to be at 0.2 months, well below the recommend reserve level as established by the DCA. It is unclear from the Bureau's 2014 sunset report what the projected growth in revenues is or of any increase or decrease in expenditures beyond FY 2015-16.

<b>Cemetery Fund Condition</b>						
(Dollars in Thousands)	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Beginning Balance	\$1,918	\$2,201	\$2,374	\$2,608	\$2,702	\$2,487
Revenues and Transfers	\$2,166	\$2,141	\$2,205	\$2,296	\$2,269	\$2,269
<b>Total Revenue</b>	<b>\$4,084</b>	<b>\$4,342</b>	<b>\$4,579</b>	<b>\$4,905</b>	<b>\$4,971</b>	<b>\$4,756</b>
Budget Authority	\$2,479	\$2,534	\$2,537	\$2,513	\$2,484	\$2,534
Expenditures	\$1,886	\$1,987	\$1,971	\$2,203	\$2,484	\$2,534
Fund Balance	\$2,198	\$2,355	\$2,608	\$2,702	\$2,487	\$2,222
<b>Months in Reserve</b>	<b>13.3</b>	<b>14.3</b>	<b>12.4</b>	<b>13.1</b>	<b>11.8</b>	<b>10.3</b>

<b>Funeral Fund Condition</b>						
(Dollars in Thousands)	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16
Beginning Balance	\$2,262	\$1,953	\$1,769	\$1,658	\$1,192	\$633
Revenues and Transfers	\$1,251	\$1,261	\$1,268	\$1,320	\$1,304	\$1,302
<b>Total Revenue</b>	<b>\$3,513</b>	<b>\$3,214</b>	<b>\$3,037</b>	<b>\$2,978</b>	<b>\$2,496</b>	<b>\$1,935</b>
Budget Authority	\$1,626	\$1,693	\$1,740	\$1,822	\$1,863	\$1,863
Expenditures	\$1,579	\$1,435	\$1,385	\$1,768	\$1,863	\$1,863
Fund Balance	\$1,934	\$1,779	\$1,652	\$1,192	\$633	\$35
<b>Months in Reserve</b>	<b>16.2</b>	<b>15.4</b>	<b>10.9</b>	<b>7.7</b>	<b>4.0</b>	<b>0.2</b>

As a Special Fund agency, the Bureau receives no GF support, relying solely on fees set by statute and collected from licensing and renewal fees. The Bureau has not statutorily changed fees within the last ten years for any of its licensing categories. Further, as of January 2015, the Bureau has expended approximately 1.2 million dollars in AG costs resulting from litigation. These costs have been expended through the Funeral Fund.

In addition, because the Bureau was established as the result of the consolidation of two separate autonomous boards in the late 1990s, the Bureau operates by two separate funds. The urgency legislation which transferred the regulatory operations of both Boards to the DCA in 1996 did not provide for the combination of funds, and yet, the Bureau is responsible for enforcement, licensing, regulations and has regulatory authority over all licensees. Currently, the Bureau is responsible for administering both the Cemetery Fund and the Funeral Fund. Licensing fees, citations and other administrative costs are collected and deposited into the appropriate fund based in accordance with current statute. Although the Bureau reports that it attempts to capture and separate the appropriate expenditures and revenues based on the fund, there are times when the administration may overlap in auditing, field staff, licensing and enforcement. Because the Bureau administers two separate funds, there may be duplicate administrative work, such as reviewing two separate fund expenditure and revenue reports, and the administrative time to review and separate each application, audit report, or fine to make sure it was charged to the appropriate fund.

Merging the funds of the DCA regulated entities would not be unique to this Bureau. In 2011, SB 933 (Runner, Chapter 449, Statutes of 2011), combined the acts applicable to speech-language pathologists, audiologists, and hearing aid dispensers and combined the funds from each of the previous regulatory entities. The issue of consolidating separate funds has also been raised in the Board of Professional Land Surveyors, Engineers, and Geologists and the Board of Vocational Nursing and Psychiatric Technicians 2014 sunset review background reports.

Although the Board of Funeral Directors and Embalmers and the Cemetery Board were merged in the late 1990s, the practice acts remain separate Funeral Directors and Embalmers Law (BPC § 7600 *et. seq.*) and the Cemetery Act (BPC § 9600 *et. seq.*). In order to consolidate merging the funds, it may be prudent for the Bureau to discuss merging the separate practice acts into one practice act in an effort to clean up duplicate provisions and streamline administrative provisions.

***Staff Recommendation:*** *The Bureau should elaborate on any planned efforts to increase its revenues or reduce its expenditures. The Bureau should also discuss its thinking as to whether it might seek a statutory fee increase in the future. In addition, the Committees may wish to inquire of the Bureau if there has been any discussion about consolidating the separate funds in an effort to streamline administrative costs and reduce administrative burdens? The Committees may wish to inquire of the Bureau how merging the practice acts would improve consumer protection and enhance administrative efficiencies for the Bureau. Lastly, the Bureau should update the Committees as to the status of the court case and explain why attorney fees were expended from the Funeral Fund and if it anticipates settlement approval and reimbursement of funds.*

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**ISSUE #2: PRO RATA. Why are pro rata costs increasing?**

**Background:** Through its various divisions, the DCA provides centralized administrative services to all boards and bureaus in the Department. Most of these services are funded through a pro rata calculation that is based on "position counts" and charged to each board or bureau for services provided by personnel, including budget, contract, legislative analysis, cashiering, training, legal, information technology, and complaint mediation. The DCA reports that it calculates the pro rata share based on position allocation, licensing and enforcement record counts, call center volume, complaints and correspondence, interagency agreement, and other cost center specific distributions. In 2014, the DCA provided information to the Assembly Business and Professions Committee, in which the Director of the DCA reported that "the majority of the [DCA's] costs are paid for by the programs



based upon their specific usage of these services." The DCA does not break out the cost of its individual services (cashiering, facility management, call center volume, etc.).

The chart below shows the DCA pro rata expenditures for the last four FYs charged to the Cemetery Fund, which anticipates spending roughly 20% of its budget on pro rata for FY 2013/14, and the Funeral Fund, which anticipates spending roughly 18% of its budget on pro rata for FY 2013/14. Although other entities under the DCA are charged a higher percentage of pro rata costs, such as the Professional Fiduciaries Bureau, which spent approximately 40% of its budget in FY 2013-2014, the pro rata expenditures have steadily increased during the past three FYs.

<b>Pro Rata Expenditures</b>					
	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	Totals
Cemetery	\$380,000	\$370,000	\$377,000	\$480,000	\$1,607,000
Funeral Directors and Embalmers	\$273,000	\$271,000	\$310,000	\$318,000	\$1,172,000
Total	\$653,000	\$641,000	\$687,000	\$798,000	\$2,779,000

*This table was taken from the Bureau's 2014 Sunset Review Report.*

**Staff Recommendation:** *The Bureau should advise the Committees about the basis upon which pro rata is calculated, and the methodology for determining how the pro rata charged will be paid from among the two funds under the Bureau's jurisdiction.*

### **ENFORCEMENT ISSUES**

#### **ISSUE #3: GPL/GENERAL PRICE LISTS.** *How does the Bureau enforce the provisions of BPC § 7685 and the Federal Trade Commission's Funeral Rule 453?*

**Background:** In 1984, the Federal Trade Commission adopted the "Funeral Rule" which requires "funeral providers" to give consumers accurate, itemized pricing information on funeral good and services, including all products sold directly to the public in connection with funeral services and those services which are used to care for and prepare bodies for burial, cremation, or other disposition of human remains. The major component of the Funeral Rule is the requirement that "funeral providers" produce a General Price List (GPL) which includes identifying information about the various goods and services that are sold along with other important disclosures. The GPL must be given to all individuals who inquire about funeral arrangements including, competitors, journalists, representatives of businesses, religious societies, government agencies, or consumer groups who inquire about funeral arrangements.

The Funeral Rule requires the GPL to be provided during a face-to-face encounter, and the price information disclosed over the phone upon request. However, as a result of SB 658 (Negrete Mcleod, Chapter 386, Statutes of 2011), California law enhanced disclosure requirements by specifically requiring, beginning January 1, 2013, that all funeral establishments which maintain a website, post their list of funeral goods and services that are required to be included in the establishment's GPL, pursuant to the Funeral Rule, and a statement that the GPL is available upon request via a link from the home page, unless a phrase containing the word "price" links to the establishment's GPL. The Bureau reports that part of its inspection procedures include an Internet search to determine if the funeral establishment maintains a website and, if so, if it is compliant with this provision.

The Bureau released the following guide to assist those funeral establishments with a website to comply with the provisions of law:

"Funeral establishments maintaining an Internet website need to be aware of the provisions of SB 658 Negrete McLeod (Chapter 386, Statutes of 2011, effective January 1, 2013). Licensed funeral establishments that maintain a website shall:

1) Post on their website the list of funeral goods and services that are required to be included in the establishment's General Price List (GPL), pursuant to federal rule, and include a statement that the GPL is available upon request;

**AND**

2) Information posted pursuant to paragraph one (1) above shall be provided by a link from the home page of the website;

**OR**

3) Post on their website home page the words "price information" or a similar statement that includes the word "price: with a link to the establishment's GPL."

The Internet allows consumers to find a variety of services and providers from anywhere they have access, and they may be more likely to search for providers and compare prices in an environment where they do not feel pressured and can shop around for what meets their needs.

However, news stories and news articles published in 2013 raised the issue that some establishments might not be complying with the spirit of California's law to provide a link to funeral goods and services on a funeral establishment's website, making it difficult for consumers to access important information. A KTLA news report on October 31, 2013, indicated that a "lack of uniformity in funeral price lists oftentimes keep consumers from making smart price comparisons". The Orange County Register reported in 2013, "that some price lists are more complete and understandable than others".

***Staff Recommendation:*** *The Committees may wish to inquire of the Bureau its process and procedures for verifying compliance with SB 658 and the requirements to post information pertaining to the goods and services listed in a GPL on an establishment's internet website. In addition, the Bureau should explain to the Committees its enforcement process for those establishments which are not in compliance (and if the Bureau was enforcing the posting requirement in 2013).*

**ISSUE #4: CITE AND FINE REGULATIONS.** *Why did the Bureau increase cite and fine penalties under the Funeral regulations and not under the Cemetery regulations?*

**Background:** The Bureau utilizes cite and fine authority. The Bureau recently amended the funeral regulations, 16 CCR §§ 1240, 1241, 1242, and 1246, to allow the ability to issue an administrative citation for violation of any of the funeral laws or regulations and incorporate the increased maximum fine amount of \$5,000. The increased fine amount became operative on October 1, 2014. However, the cite and fine amount authorized by the cemetery regulations were not revised at the same time. The Bureau reports that it is in the process of amending the cemetery regulations, CCR §§ 2382–2388, to allow the ability to issue an administrative citation for violation of any of the cemetery laws or regulations and incorporate the increased maximum fine amount of \$5,000. The proposed language for these amendments was reviewed during the Advisory Committee meeting in July 2014. The Bureau states that "ideally, the Bureau would like to have worked on both funeral and cemetery regulations

together. However, the LLC regulations have been a priority [as] required by SB 1225, (Harman, Chapter 114, Statutes of 2008), and staffing resources limit the number of regulatory packages we can pursue at one time. The Bureau will be ready to submit the cemetery citation and fine regulation package for internal [DCA] review by the end of February 2015."

**Staff Recommendation:** *The Bureau should explain to the Committees why regulations to increase the cite and fine amount for the Funeral fund were completed in 2014, but were not completed for the Cemetery fund at the same time. The Bureau should explain to the Committees when it anticipates the cite and fine increase to become effective for the Cemetery Fund?*

**ISSUE #5:** CEMETERIES WITH ENFORCEMENT ISSUES. *Is the current enforcement process working to ensure cemeteries are adhering to proper guidelines and regulations?*

**Background:** A Bureau-licensed cemetery is any private, non-religious cemetery established after 1939. Any cemetery established after September 7, 1955 is required to be an endowment care cemetery (HSC § 8739.1). An endowment care cemetery is one in which a portion of the purchase price is contributed to an endowment care fund. Income generated from the fund is used to provide regular care of the cemetery, including routine maintenance such as cutting grass, grave upkeep, planting and caring for trees, maintenance of water supply systems, roads, drainage, etc. The minimum amount to be contributed to the endowment care fund is governed by HSC § 8738. Current law designates the specified amount of money to be deposited into the fund for each grave, niche, crypt, or for the scattering of remains. The endowment care funds are to be collected no later than at completion of the initial sale. The intent of endowment care is to ensure that the maintenance and care of cemetery grounds is continuously met and to help prevent cemeteries from falling into disrepair. The Bureau has the authority to inspect and audit endowment care funds and BPC § 9650 specifically requires cemeteries to report annually the status and conditions of such funds.

The current regulations for cemetery maintenance standards are found under 16, CCR § 2333. The regulations require every endowment care fund cemetery to have cemetery maintenance standards which help to ensure the property is kept in a condition that helps to prevent the offensive deterioration of a cemetery. Examples of the maintenance standards include trimming or mowing grass, removing shrubs and or trees, removing or suppressing weeds, providing a sufficient amount of water to keep grass and plants green as seasonably possible in accordance with natural terrain, availability of water, and local or county ordinances regarding water use. Further, the regulations allow cemetery maintenance and care to vary depending on its size, location, topography, and the types on internments. Although endowment care cemeteries are not required to maintain green grass, there may be expectations of individuals who seek to bury loved ones in a cemetery with desirable maintenance standards.

Those cemeteries that do not have endowment care are required to notify individuals. This notification may help consumers make the appropriate decision when deciding upon a final resting place for themselves or loved ones. Bureau-regulated cemeteries that have both endowed care sections and non-endowed care sections are required to disclose information about both the non-endowed and endowed sections of the cemetery. Although the intent of endowment care is ensure the upkeep and maintenance of a cemetery, there are instances where the maintenance of a cemetery may be in a greater need than endowment funds will allow.

A recent article in the Los Angeles Times highlighted a potential problem impacting a historic, Bureau-regulated, cemetery in Boyle Heights. According to the article, Evergreen Cemetery is no longer able to maintain "green" grass on its grounds because of potential watering issues resulting from the California drought. In addition, the current infrastructure is not able to properly meet the cemetery's watering needs. Although the cemetery is an endowment care cemetery the maintenance costs potentially exceed the coverage in the endowment care fund. According to the article, the grass is no longer green and, "the little greenery that remains is largely maintained by families of the recently buried who tend to the graves themselves. They bring sprinklers and string cutters along with folding chairs on their visits to their loved ones' graves. Their work maintains a few odd-looking patches of living grass amid the brown earth that forms a prominent half-mile vista between Cesar Chavez Boulevard and 1st Street."

Currently, the owners of Evergreen Cemetery (a license holder) and the Cemetery Manager (a license holder) are on probation for a term of two-years and must adhere to certain guidelines and reporting requirements established under a stipulated settlement agreement with the Bureau in relation to a number of violations. The stipulated settlement finds that in order to continue operations, the cemetery and cemetery manager licensees are required to report quarterly to the Bureau; participate in Bureau-interviews as set by the Bureau; have monthly inspections by the Bureau; require any advertising to depict the appropriate appearance of the cemetery; and, adhere to specified posting notifications which aim to inform consumers that watering restrictions are in effect, among other requirements.

When the Bureau revokes a license, its regulatory jurisdiction over that business or individual ends. However, cemeteries are unique in that the Bureau can revoke the license, but the "business" does not end; there is still a piece of land or the real estate wherein deceased people are buried that need to be maintained. The Bureau's jurisdiction over cemeteries remains only with regard to approving interments as specified by BPC § 9718 and 16 CCR § 2332, which permits the Bureau to approve interments in cemeteries where the license has lapsed or been revoked. However, the Bureau's authorization is limited to allowing interments for decedents who have a right of interment through a preneed contract. The endowment care funds associated with that cemetery must remain as trust funds and can only be used for the purpose for which they were intended. The Bureau has revoked four cemetery licenses from 2005 through 2015. Since the licenses were revoked, one cemetery license was reinstated in November 2012; another cemetery was converted to a religious entity that now operates the cemetery; another one is currently in the process of being purchased by a religious entity; and one cemetery currently remains unlicensed.

***Staff Recommendation:*** *The Committees may wish to inquire of the Bureau what steps it is taking to ensure that Evergreen Cemetery or other cemeteries in similar conditions, facing unique infrastructure challenges are properly maintained. The Committees may wish to inquire of the Bureau if any changes or updates to endowment care fund requirements are needed to ensure that cemeteries can meet their maintenance obligations, especially given California's precarious water situation. In addition, the Committees may wish to inquire of the Bureau, the transition that occurs from state regulatory oversight when a cemetery license is revoked, and how the Bureau assists with implementing a transition.*

## **TECHNOLOGY ISSUES**

**ISSUE #6** ENFORCEMENT INFORMATION. *How can the Bureau enhance the available data on its website to inform consumers about potential licensing infractions?*

**Background:** In reference to the case cited above, the owner of Evergreen Cemetery (a license holder) and the Cemetery Manager (a separate license holder) are currently on probation for a term of two years and must adhere to certain guidelines and reporting requirements established under a stipulated settlement agreement with the Bureau in relation to a number of infractions. As noted, while both licenses are under formal probation, the internet website maintained by the Bureau displays both licenses as "clear" even though the licensees are currently on probation. While probation is a form of discipline and not a license revocation, in order for consumers to make informed decisions about the final resting place for themselves or loved ones, it would be beneficial for consumers to have access to the current license status of all license-holders, including probation or other disciplinary action. By not providing some indication of enforcement actions, it may be confusing and not in the best interest of consumers.

**Staff Recommendation:** *The Bureau should explain to the Committees how it can better inform consumers about the status of its licensing population, especially those who have enforcement-related stipulations or other enforcement-related outcomes. Are there barriers for the Bureau to post pertinent disciplinary information?*

**ISSUE #7: TERMINATION OF THE BreEZe CONTRACT: RELEASE THREE. How does this impact the Bureau?**

**Background:** The "BreEZe Project" was designed to provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreEZe system was engineered to replace the existing outdated Legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

According to the DCA, BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet when fully operational. The public also will be able to file complaints, access complaint status, and check licensee information, when the program is fully operational.

According to the original project plan, BreEZe was to be implemented in three releases. The budget change proposal that initially funded BreEZe indicated the first release was scheduled for FY 2012–13, and the final release was projected to be complete in FY 2013–14.

In October 2013, after a one-year implementation delay, the first ten regulatory entities were transitioned to the BreEZe system. Release Two is scheduled to go live in March 2016, three years past the initial planned release date. As a result of significant cost and implementation concerns, among others, the DCA reported in late 2014, that the current vendor contract is no longer in place, and those regulatory entities that were scheduled for Release Three will not transition to the BreEZe system. Currently, the technology upgrade, intended by BreEZe, is on hold as the DCA, Caltech and DGS determine the appropriate next steps.

The Bureau was scheduled for Release Three, and with the cancellation of the BreEZe contract, it is unclear when the Bureau will undergo technology upgrades that aim to increase efficiencies for licensees and Bureau staff. A recent audit report conducted by the California State Auditor, *California*

*Department of Consumer Affairs' BreEZe System*, found that "the future implementation of BreEZe is uncertain at best and, as it relates to the regulatory entities originally included in the final release (Release Three), likely unfeasible." To date, the Bureau has spent approximately \$48,000 to prepare for the BreEZe system transition. The auditor's report also noted that "Consumer Affairs is not responsible for funding the project costs; rather, the total costs of the project are funded by regulatory entities' special funds, and the amount each regulatory entity pays is based on the total number of licenses it processes in proportion to the total number of licenses that all regulatory entities process." It is unclear what that amount is, and how much the Bureau has paid, to date, for a technology project that it will not likely utilize.

**Staff Recommendation:** *The Bureau should update the Committees about its preparation for BreEZe and what processes may have been implemented in preparation for a new system? What are the current costs that the Bureau has already expended in anticipation of BreEZe and can any of those costs be recuperated, given the Funeral Fund's current fiscal situation? The Bureau should update the Committees on the total amount they anticipated spending on the BreEZe system? In addition, the Bureau should advise the Committees about concerns with the technology (Legacy systems) it is currently utilizing.*

## **ADMINISTRATIVE ISSUES**

**ISSUE #8: ADVISORY COMMITTEE COMPOSITION.** *Should the Advisory Committee have a public member majority?*

**Background:** The Bureau does not have a formal "board" but has established an Advisory Committee. The Advisory Committee is expected to provide important professional and technical assistance to the Bureau on issues related to the regulation of licensed funeral establishments, cemeteries, and crematories in California. Specifically, the Advisory Committee, as directed by the Bureau, may be asked to provide input on the following functions: administration, regulation, licensing, and enforcement.

The Advisory Committee is comprised of seven individuals, four members are selected from the industry and three members represent the public. The Bureau Chief is responsible for selecting and appointing committee members upon the approval of the Director of the DCA. Advisory Committee members are volunteers, who serve at their own expense, in an advisory capacity and only make nonbinding recommendations directly to the Bureau Chief.

Because the Advisory Committee is not statutorily mandated, there is not a requirement to hold a specific number of meetings, nor is there a requirement that a specified number of committee members be present to conduct business.

It is customary for the Boards, Bureaus and Committees under the jurisdiction of the DCA to contain both representatives of the professional industry along with public members who are not affiliated with the regulated industry. Typically, public members hold a majority of membership positions. Currently, the Bureau's Advisory Committee is dominated by industry representatives.

**Staff Recommendation:** *Given the current public member majority reflective of numerous other Boards, Bureaus and Committees under the jurisdiction of the DCA, the Bureau should advise the*

*Committees as to its reasons for maintaining an industry-dominated advisory committee. Should the Advisory Committee be updated to contain a public member majority?*

**ISSUE #9: CONSUMER SURVEYS. *Why are there a large number of unsatisfied consumers?***

**Background:** The Bureau reports that it includes a postage-paid customer satisfaction survey with almost every closure letter for complaints and also includes a website address where consumers can complete a more comprehensive survey. When survey postcards are received, the responses are manually entered into the electronic survey system, and the Bureau receives a quarterly report with all of the responses received. When consumers include specific comments, the Bureau reviews them to identify ways to improve or change its processes, or to recognize staff when they have received positive comments about the service provided.

The Bureau reports that it strives to address all issues identified in a complaint, realizing that some are complex and require additional time to complete, some are non-jurisdictional, and some do not establish a violation of law. Additionally, there are circumstances where the consumer is not satisfied with the proposed resolution. The Bureau's survey responses for FY 2011-12, 2012-13, and 2013-14, demonstrate that a significant numbers of consumers continue to be dissatisfied with work of the Bureau in resolving complaint issues. The survey feedback from consumers demonstrates that the three following questions continue to receive a consistent amount of negative feedback from consumers:

- How satisfied were you with the time it took for us to resolve your complaint?
- How satisfied were you with the explanation you were provided regarding the outcome of your complaint?
- Overall, how satisfied were you with the way in which we handled your complaint?

Although the surveys show customer satisfaction in other areas, the survey results demonstrate that consumers have consistently given the Bureau negative feedback in these general areas.

**Staff Recommendation:** *The Bureau should advise the Committees on ways it can improve customer satisfaction. In addition, the Bureau should explain to the Committees what types of complaints, concerns, or issues the Bureau is unable to assist consumers with and if it refers consumers to other entities who may be able to assist with those issues.*

**ISSUE #10: INDUSTRY CHANGES. *How does the Bureau prepare for changes in the death care industry such as the rise of "green burials"?***

**Background:** The funeral industry provides essential services to people throughout California and across the nation. Eventually, everyone will need funeral, burial, or cremation services for themselves or for a loved one. Although the "traditional burial," or casket-in-the-ground-type interment, is one of the most well-known forms of burials in the United States, there are numerous indicators which suggest that people's attitudes about their final resting place and route to that final destination are changing.

As reported by the National Funeral Directors Association, the average cost for a traditional funeral service in 2012 was approximately \$7045, and if a cemetery requires a vault that cost could increase to

over \$8000. This figure does not include cemetery costs or any incidentals such as flowers, monuments, or obituaries. Since 1960, the National Funeral Directors Association has tracked the trends in funeral prices, and observed that prices have steadily increased.

Given the high cost associated with a traditional burial, individuals began to utilize cremation as an alternative means of final disposition because cremation services are typically less expensive than traditional burial services. According to the Funeral Consumer Alliance, the number of cremations in the United States has risen from about 15% of deaths in the mid-1990s to almost 50% in 2014.

Today, it is likely that consumers are shifting burial or funeral preference not only for financial reasons, but also because of the heightened awareness of the environmental footprint left behind by traditional burial and cremation services. According to Greensprings Natural Cemetery Preserve, "...on average, a cemetery buries 1,000 gallons of embalming fluid, 97.5 tons of steel, 2,028 tons of concrete, and 56,250 board feet of high quality tropical hardwood in just one acre of green." In addition, "...each cremation releases between [0.8] and 5.9 grams of mercury as bodies are burned. This amounts to between 1,000 and 7,800 pounds of mercury released each year in the U.S. 75% goes into the air and the rest settles into the ground and water." The environmental impact can lead consumers to reconsider the type of funeral service they choose. A March 2014 article in the New York Times, *The Rise of Back-to-the-Basics Funerals*, highlighted emerging trends in the death care and funeral services industry. The article noted the growing demand for "green funerals," which reportedly cost less than traditional funerals, but is also helping shift funeral services away from the traditional use of chemicals, such as in embalming fluids and non-biodegradable caskets, into a more environmentally friendly alternative. In a survey released by the AARP in 2007 titled *Funeral and Burial Planners Survey*, a key finding from the survey found that given the large number of individuals over age fifty who are preplanning and prepaying for funerals and burials, consideration should be given to increasing education for this population about environmentally-friendly burial options, among others.

As consumer demand shifts towards green or more eco-friendly funeral and burial services, the Bureau will need to expand its regulatory focus to ensure new death care practices are under its regulatory jurisdiction in order to continue serving its mission and protecting consumers. For example, the Green Burial Council states that it offers environmental certificates for funeral homes, cemeteries, and product manufacturers. However, the Bureau does not assess or regulate if a cemetery advertising green burial services is actually providing a true "green burial." Adjusting regulatory priorities will be necessary at the Bureau as the industry adapts to future industry growth and consumers' burial demands change.

In addition, since 2010, four separate bills attempted to establish the regulatory framework for the use of alkaline hydrolysis (which is the process by which human remains are reduced to bone fragments with the utilization of water and a blended alkaline solution, combined with heat and pressure): AB 764 (Linder, 2013), attempted to establish a six-year pilot program to allow the Bureau to issue a limited crematory license to no more than five hydrolysis facilities; AB 1615 (Miller, 2012), would have authorized the Bureau to license and regulate hydrolysis facilities and hydrolysis facility managers; AB 4 (Miller 2011), would have authorized the Bureau to license and regulate hydrolysis facilities and hydrolysis facility managers, as specified; and, AB 2283 (Miller, 2010), would have required the Bureau to adopt regulations for the safe operation of alkaline hydrolysis chambers by July 1, 2011. All four bills were held in legislative Committees.



Currently, the Bureau provides some important information on its website about alternative burial options such as natural burial and home death care; however as the industry expands, the Bureau may need to reevaluate its regulatory oversight and enhance education and outreach efforts with consumers about death care options.

**Staff Recommendation:** *The Bureau should explain to the Committees how it is preparing for changes in the funeral industry including any plans or preparation necessary to alter its current regulatory authority.*

## UPDATES

**ISSUE #11:** **UPDATED INDUSTRY REPORTS.** *Is it time for the Bureau to conduct updated studies regarding third-party casket-retailers and proprietary employees in order to ensure consumer protection standards are maintained?*

**Background:** As a result of the Bureau's last sunset review in 2002, the Bureau was required to complete a number of studies and report back to the Legislature on some of the unregulated aspects of the industry, such as third-party casket retailers and the regulation of proprietary employees of religious corporations, churches, religious societies, and religious denominations. The 2002 background paper found that "more attention has been focused on retail casket sales by industry associations, and by corporate and independent owners of funeral establishments and cemeteries." Legislation was sponsored in 1997 to place contract, disclosure and trust fund requirements on casket retailers in an effort to "level the playing field" between "discount" casket sellers and traditional funeral home caskets sellers. Additionally, the legislation was intended to protect consumers by applying existing consumer protection provisions to all casket sales. Although legislative efforts did not materialize, the issue may still be of interest as the industry continues to grow.

The 2002 background report also highlighted that while BPC §§ 9600-9789 covers the licensing and regulation of cemeteries, cemetery brokers, cemetery managers, cemetery salespersons, cremated remains disposers, crematories, and crematory managers, a religious corporation, church, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled, and operated by any of them is specifically excluded from regulations under the Cemetery Act as specified in BPC § 9609. As part of the recommendations of the JLSRC, in response to the Bureau's 2002 sunset review, the Bureau conducted a comprehensive study to determine the feasibility and necessity of oversight for third-party casket retailers and of oversight for proprietary employees of religious corporations, churches, etc. Those reports were delivered to the Legislature in 2004, which presented the Bureau's findings and concluded that while the potential for harm does exist in that consumer monies paid for advance purchases are not protected, based on information from complaints, it does not appear that regulation of casket retailers is warranted, but that Bureau would continue to monitor complaints by local District Attorneys. Regarding the need to regulate proprietary employees, the Bureau reported that potential for harm always exists; the Bureau had not received any complaints and will continue to monitor complaint histories. To date, the Bureau reports that it has only received a very small number of enforcement-related issues involving third-party casket retailers. Over the past five years, enforcement issues surrounding third-party casket retailers and proprietary employees of religious corporations, churches, religious societies/denominations has been minimal. Most often, those issues were identified during an investigation of a funeral establishment or an allegation of unlicensed activity. In addition, BPC § 17530.7 places specific requirements upon casket retailers and directs consumers to contact

their local district attorney's office for assistance. Any complaints received against cemeteries owned or controlled by religious entities are referred to the appropriate religious body for resolution.

**Staff Recommendation:** *The Committees may wish to explore requiring the Bureau to re-examine the previous issues and report back to the Legislature in four-years whether or not there is a renewed need to regulate third-party casket retailers or proprietary employees of religious corporations, churches, religious societies, and religious denominations.*

**ISSUE #12:** ENDOWMENT CARE FUNDS. *Is there a need to increase the mandatory funds collected for endowment care?*

**Background:** BPC § 9650 requires cemeteries to file an annual report regarding the amount collected for endowment care funds and special care funds (preneed cemetery merchandise and services), the manner of investment of the funds, as well as other financial information and related documents. The annual report must be submitted with an audit report signed by a certified public accountant. The Bureau's audit unit reviews each of those annual reports and assesses any potential risk to the funds.

BPC § 9652 requires the Bureau to examine (audit) the annual reports of a cemetery whenever it deems necessary and at least once every five years. In compliance with this provision, the Bureau's audit unit performs periodic site visits to ensure cemeteries are adequately protecting consumer funds, including appropriately accounting for the endowment funds and SCF and properly conserving the principal of the funds. During the site visits, the auditors interview management and staff at the cemeteries and obtain and review necessary documentation for their analysis. The documentation collected during these site visits typically include trust agreements, contracts, burial records, accounting records, and bank statements. Using the information and documents collected, auditors perform audit testing as necessary to meet Generally Accepted Government Auditing Standards in their evaluation of the cemeteries' compliance with applicable laws and regulations. At the conclusion of fieldwork, the auditors issue a written report detailing the audit findings and specifying any corrective actions the cemetery should take in order to comply with specified requirements.

In 2008, SB 1135 (Ducheney, Chapter 545, Statutes of 2008), increased the minimum amounts an endowment care cemetery is required to deposit in its endowment care fund. Funds were increased as follows: for each grave, increases from \$2.25 to \$4.50 per square foot; for each niche, increases from \$35 to \$70; and, for each crypt, increases from \$110 to \$220, and for companion crypts, increases from \$110 to \$220 for the first crypt and from \$55 to \$110 for each additional crypt. In addition, the bill required \$70 as the minimum amount of endowment care for the cremated remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site.

In 2008, the Bureau reported to the Legislature the results from its *Endowment Care Fund Survey*, which addressed the need to increase endowment care fund requirements. The Bureau's survey requested that all licensed cemeteries as of December 31, 2006, to provide information regarding maintenance expenses, cemetery space and availability, and a five-year forecast for maintenance and expenses. Based on the responses received and the Bureau's 2006 Annual reports, the Bureau made several recommendations in its report back to the Legislature which included: increasing the minimum contribution rates; revising HSC § 8738 to make it more clear that cemeteries can collect more than the minimum required in an endowment care fund; working with local governments interested in taking over financially strapped cemeteries; encouraging financially strapped cemeteries to come up with alternative sources of revenues; providing financially strapped cemeteries with technical assistance

from the Bureau; educating licensees about investment options; and, creating an abandoned cemetery fund. While an increase in funding for endowment care was enacted in 2008, it is unclear if any of the other recommendations made by the Bureau were implemented. Given the state's current drought conditions and the unknown number of cemeteries which may lack the infrastructure necessary to maintain desired cemetery standards, it may be beneficial for the Bureau to reinvestigate endowment care fund requirements, regulations, and implemented policy provisions.

**Staff Recommendation:** *The Committees may wish to explore requiring the Bureau to conduct an updated study on endowment care fund requirements and needs. The Bureau may want to consider an alternative study, other than a survey, which had a low response rate.*

## **CONTINUED REGULATION OF THE CEMETERY AND FUNERAL INDUSTRY BY THE CEMETERY AND FUNERAL BUREAU**

**ISSUE #13:** CONTINUED REGULATION BY THE BUREAU. *Should the licensing and regulation of the Cemetery and Funeral Bureau be continued and be regulated under the DCA?*

**Background:** The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory Bureau charged with regulating the cemetery and funeral industry, within California. The death of a loved one can be one of the most traumatic experiences a consumer will face. Given the complex and sensitive nature of ensuring compliance with state and federal laws regarding the death care industry such as ensuring fair and accurate price list disclosures, auditing endowment care funds, overseeing preneed trusts, and inspecting funeral homes and crematory facilities, the Bureau is well-positioned to continue the regulation over nearly every aspect of the licensed cemetery and funeral industries.

The Bureau licenses, regulates, and investigates complaints against California funeral establishments, funeral directors, embalmers, apprentice embalmers, cemetery brokers, cemetery salespersons, cemetery managers, cremated remains disposers, crematories, crematory managers and the nearly 200 fraternal and private cemeteries in the State. The Bureau has responsibility for oversight of both the fiduciary and the operational activities of the industries. The Bureau has the financial regulatory authority to ensure compliance with the laws, verify accounting and investing practices, and identify funding shortages. Although, there are a number of issues identified above, which the Bureau can improve upon and prioritize to continue to safeguard against inappropriate conduct, regulation by the Bureau should be continued and reviewed again in four years where the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

**Staff Recommendation:** *Recommend that the licensing and regulation of the cemetery industry continue to be regulated by the current Bureau in order to protect the interests of the public and be reviewed once again in four years.*