

# **BACKGROUND PAPER FOR THE Cemetery and Funeral Bureau**

**(Joint Oversight Hearing, March 5, 2019, Senate Committee on  
Business, Professions and Economic Development and the Assembly  
Committee on Business and Professions)**

## **IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE Cemetery and Funeral Bureau**

### **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 third sunset review.

The Bureau licenses and regulates more than 13,500 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 December 1, 2018 are identified below.

## License Holders

<b>Table 6. Licensee Population</b>					
		FY 2014–15	FY 2015–16	FY 2016–17	FY 2017–18
Funeral Establishment	Active	1,035	1,038	1,044	1,056
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	17	20	18	9
Funeral Director	Active	2,238	2,270	2,285	2,274
	Out-of-State	125	124	135	141
	Out-of-Country	3	2	2	3
	Delinquent	489	505	510	521
Embalmer	Active	1,626	1,603	1,598	1,561
	Out-of-State	174	171	170	177
	Out-of-Country	3	3	2	3
	Delinquent	353	352	357	358
Apprentice Embalmer	Active	301	288	285	270
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	8	2	16	45
Certificate of Authority (Cemetery)	Active	194	193	195	194
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	2	1	0	1
Crematory	Active	225	226	225	229
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	0	0	1	1
Cemetery Manager	Active	288	292	302	299
	Out-of-State	9	10	10	10
	Out-of-Country	0	0	0	0
	Delinquent	65	65	51	57
Crematory Manager	Active	482	493	488	491
	Out-of-State	16	17	18	18
	Out-of-Country	0	0	0	0
	Delinquent	91	87	90	101
Cemetery Broker	Active	185	182	184	197
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	8	10	7	10
Cemetery Branch Broker	Active	72	64	61	69
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	16	15	6	5

Cemetery Broker Additional	Active	15	14	14	14
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	1	1	1	1
Cemetery Salesperson	Active	3,846	4,495	4,890	4,936
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	274	276	324	625
Cremated Remains Disposer	Active	155	152	164	166
	Out-of-State	n/a	n/a	n/a	n/a
	Out-of-Country	n/a	n/a	n/a	n/a
	Delinquent	79	81	47	45

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

- **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. Audits may be initiated upon review of an annual trust report, failure to file a trust report, consumer complaints, or for any other reason if the funds appear to be at risk of possible abuse or noncompliance.

### **Advisory Committee**

The Bureau does not have a "board" but has voluntarily established an Advisory Committee. The seven-member Advisory Committee is comprised of industry representatives and public members. The Bureau generally holds two public 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>Jeanne Clark (Professional)</b> General Manager/Designated Manager at Ivy Lawn Memorial and Funeral Home, Designated Manager at Ivy Lawn Cemetery and Lawn Crematory, Funeral Director, Cemetery Manager, Cemetery Broker, Crematory Manager	02/01/2018	01/30/2020	Bureau Chief
<b>Christopher Donhost (Professional)</b> Donor Recovery Liaison, Sierra Donor Services Funeral Director, Embalmer, Cemetery Manager, Crematory Manager	09/01/2015	01/30/2020	Bureau Chief
<b>Nickolas Marinelli (Professional)</b> General Manager/Sales Manager/Designated Manager Italian Cemetery, Inc. Funeral Director, Cemetery Manager, Cemetery Broker, Crematory Manager	02/01/2018	01/30/2020	Bureau Chief
<b>Nichol Montague (Professional)</b> South Los Angeles Cremation Services (Funeral Establishment), Owner South Los Angeles Mortuary (Funeral Director) Life Insurance Agent (Funeral & Burial), Department of Insurance Funeral Director	02/01/2018	01/30/2020	Bureau Chief
<b>Patrick Collins (Public)</b> Deputy District Attorney Napa County District Attorney’s Office Consumer/Environmental Protection Unit	02/01/2018	01/30/2020	Bureau Chief
<b>Maria Mangini (Public)</b> Registered Nurse Practitioner, PhD Holy Names University, Director, Family Nurse Practitioner Program	09/01/2015	01/30/2020	Bureau Chief
<b>Jean Okuye (Public)</b> President Funeral Consumers Alliance of California (Stanislaus/Merced Counties)	02/01/2018	01/30/2020	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 seven different Bureau Chiefs. The current Bureau Chief was appointed in February of 2019.

The Bureau currently has 23.5 authorized positions, consisting of 9 full-time field staff located throughout the state and 14.5 office staff members in Sacramento. The Bureau indicates that it has not had a problem with recruitment or retention issues. The Bureau reports that employs nine field representatives who are responsible for routine inspections of funeral establishments, cemeteries, crematories, and cremated remains disposers to ensure compliance with the Cemetery and Funeral Act (BPC Section 7600, et seq.). 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 representatives 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).

Until mid-2016, the Bureau's management team consisted of the Bureau Chief, Deputy Bureau Chief and a Supervising Auditor. While the Supervising Auditor manages a very specific program activity, the Deputy Bureau Chief was responsible for managing 15 staff for the Bureau's licensing, enforcement, administrative and field activities. To be more efficient and distribute workload appropriately, the Bureau initiated a personnel action to upgrade one of its associate governmental program analyst positions to a Staff Services Manager I position. The Bureau's management team now consists of the following:

- Bureau Chief
- Program Operations Supervisor
- Field Operations Supervisor
- Supervising Auditor

## ***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 care 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 nine individuals in its auditing unit including a Supervising Auditor. Three of the auditor positions are two-year, limited-term positions scheduled to expire at the end of the calendar year 2020.

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 programs.

**Fiscal and Fund Analysis**

Although the Bureau operates as a single regulatory entity, it has in the past been comprised of two separate special funds, the Cemetery Fund (Cemetery) and the Funeral Directors and Embalmers Fund (Funeral). Effective July 1, 2016, AB 180 (Bonilla, Chapter 395, Statutes of 2015) merged the Bureau’s two separate funds into one special fund, the Cemetery and Funeral Fund. Since combining the funds, at the end of fiscal year 2017-18, the Bureau now has a reserve balance of 7.1 months in the Cemetery and Funeral Fund. There is no mandated reserve level for the Bureau, therefore the general provisions of Section 128.5(a) would apply which says the reserve should not exceed 24.0 months. The DCA Budget Office, however, has historically indicated that smaller programs should at least maintain an adequate reserve level of three to six months to provide for a reasonable contingency fund so that the Bureau has fiscal resources to absorb any unforeseen costs, such as costly enforcement action or other unexpected client service costs. If it is anticipated that the reserve level will fall below the three month level, then a fee increase should be considered for the board, bureau or program in the near future.

There is no projected deficits in the Cemetery and Funeral Fund at this time. 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. The Bureau has not has any changes for licenses, registrations, or renewal for more than 18 years. The Bureau decided to have a fee audit conducted in 2016 to discuss the possibility of exploring legislative opportunities that will allow it to statutorily adjust the maximum fee cap and subsequently pursue regulatory changes to adjust its fees if and when it determines a fee increase is necessary.

***The Cemetery and Funeral Fund***

As indicated, at the end of Fiscal Year (FY) 2017-18, the Bureau reported that the Cemetery and Funeral Fund had a reserve balance of 7.1 months. Providing a table of the two funds, both the prior Funeral Fund and the current Cemetery and Funeral Fund, gives a clearer picture of the two funds being merged by July 1, 2016. There has been no history of general fund loans from the Cemetery Fund, the State Funeral Directors and Embalmers Fund, or the Cemetery and Funeral Fund. The Bureau does not anticipate deficits in the Cemetery and Funeral Fund at this time.

<b>Table 2. Fund Condition (Funeral*)</b>						
(Dollars in Thousands)	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Beginning Balance**	\$1,677	\$1,528	\$1,516	\$1,513	\$1,513	\$0
Revenues and Transfers	\$1,262	\$1,293	\$0	\$0	-\$1,513	\$0
<b>Total Revenue</b>	<b>\$2,939</b>	<b>\$2,821</b>	<b>\$1,516</b>	<b>\$1,513</b>	<b>\$0</b>	<b>\$0</b>

Budget Authority	\$1,868	\$1,854	\$0	\$0	\$0	\$0
Expenditures***	\$1,418	\$1,310	\$3	\$0	\$0	\$0
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>	\$1,521	\$1,511	\$1,513	\$1,513	\$0	\$0
<b>Months in Reserve</b>	13.9	13.8	n/a	n/a	n/a	n/a

*\*The Funeral Directors and Embalmers Fund merged with the Cemetery Fund on July 1, 2016, creating the Cemetery and Funeral Fund*

*\*\*Includes prior year adjustments*

*\*\*\*Includes direct draws from the fund*

**Table 2. Fund Condition (Cemetery and Funeral Fund\*)**

(Dollars in Thousands)	FY 2014-15**	FY 2015-16**	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
Beginning Balance***	\$2,703	\$2,966	\$3,410	\$3,573	\$2,855	\$3,543
Revenues and Transfers	\$2,420	\$2,476	\$3,812	\$4,003	\$5,529	\$4,096
<b>Total Revenue</b>	\$5,123	\$5,442	\$7,222	\$7,576	\$8,384	\$7,639
Budget Authority	\$2,531	\$2,507	\$4,246	\$4,487	\$4,487	\$4,484
Expenditures****	\$2,161	\$2,037	\$3,649	\$4,721	\$4,841	\$4,931
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General	\$0	\$0	\$0	\$0	\$0	\$0
Loans Repaid from General Fund	\$0	\$0	\$0	\$0	\$0	\$0
<b>Fund Balance</b>	\$2,962	\$3,405	\$3,573	\$2,855	\$3,543	\$2,709
<b>Months in Reserve</b>	9.7	11.2	9.1	7.1	8.6	6.5

*\*The Funeral Directors and Embalmers Fund merged with the Cemetery Fund on July 1, 2016, creating the Cemetery and Funeral Fund*

*\*\*Reflects activity for the Cemetery Fund only*

*\*\*\*Includes prior year adjustments*

*\*\*\*\*Includes direct draws from the fund*

**Expenditures by Program Component – Cemetery and Funeral Fund:** During the last four FYs, the Bureau has spent approximately 35% to 43% of its budget on enforcement; 23% to 24% on auditing; 6% on licensing; 17% to 20% on administration; and 19% to 20% on DCA pro rata. It should be noted, as indicated earlier, that the State Funeral Directors and Embalmers Fund was merged with the Cemetery Fund on July 1, 2016, creating the Cemetery and Funeral Fund.

### Licensing

As of FY 2017-18, the Bureau reports that its active licensing population is approximately 11,756 with approximately 1,780 of those being delinquent licensees. (The highest number of delinquent licensees are funeral directors, embalmers, cemetery and crematory managers, cemetery salespersons and cremated remains disposers.) Except for maybe the cemetery salesperson license, the licensing population has seen little change within the past four FYs. The Bureau reports it has seen a slight increase over the last three FYs with respect to the number applications received for cemetery

salespersons. Since FY 2014-15, the number of licensed cemetery salespersons has increased by 1,090 licensees or 28% 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.

In 2016, the Bureau implemented Licensing Performance Measure (LPM) and established target timeframes for each license type. Most applications received by the Bureau are reviewed within five to seven business days of receipt. When necessary, applications are forwarded to the Bureau's Enforcement Unit and/or Audit Unit for review and approval based on the type of applications received. The typical turnaround time for review by each of those units is two to five business days. Deficiency letters are issued within two to four business days of identifying a deficiency, and completed applications continue through the process for an inspection and/or license issuance.

The Bureau reports that it is continually evaluating its processes and procedures to ensure timely review and issuance of licenses. Procedures are well-documented, and this allows for cross-training of staff to assist with licensing processes when/if necessary.

Although the Bureau does not track separate cycle times for completed and incomplete applications, it can identify total cycle times for *all* applications received. The Bureau reports the quantity of new applications received by the Bureau has fluctuated over the last three fiscal years. The overall cycle times reflect that there were minimal variances in the total processing time for the majority of applications received. The average time to process applications largely depends on the receipt of the items required for the issuance of the license. For applications that are received complete, the average processing time is within the Bureau's LPM and has been slightly reduced for most license types, while some license types reflect minimal increases in processing times.

The Bureau reports that the ability to receive electronic fingerprint information along with improved processes and procedures has helped to reduce cycle times. Criminal Offender Record Information (CORI) is sent directly to the Bureau's Licensing Unit through the Applicant Tracking System (ATS) from the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). Most clearances are received within seven to ten business days from the fingerprint submission.

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 California-specific 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 California-specific cemetery broker examination consists of 100 multiple-choice questions in major content areas such as sales, interment, and broker management.
- The California-specific 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 California-specific 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, Burbank, Carson, El Monte, Santa Fe Springs, Fresno, Hayward, Redding, Riverside, Sacramento, San Diego, San Francisco, 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 DOJ and the 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 representative.

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 representative.

The Bureau's field representative 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 now tracks applicants and licensees who have identified themselves as veterans on a spreadsheet that staff can access on a shared drive. The Bureau has a supplemental form all applicants for individual licenses complete that includes the question: “Have you ever served in the United States Military?” In addition, the Bureau developed a Military Affidavit form that lists all programs available to military personnel and/or their spouse or registered domestic partner. This, the Bureau reports, allows them to better identify and assist military members and veterans applying for professional licensure. Additionally, information is available on the Bureau’s website under the “Military Information” link, providing statutory provisions currently available to military personnel and/or their spouses.

According to the Bureau's 2018 sunset report, as of December 2018, the Bureau had not received any applications requesting consideration of military training, education, or experience and the Bureau has not received any requests to expedite an application (BPC § 115.5) or to waive fees or renewal requirements (BPC § 114.3).

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: they are 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).

## **School Approval**

California has two degree-granting public colleges that offer a curriculum in mortuary science. BPC section 7643 states that the program must be approved by the Bureau and accredited by the American Board of Funeral Service Education (ABFSE) or its equivalent, as determined by the Bureau. The ABFSE serves as the national academic accreditation agency for college and university programs in funeral service and mortuary science education. The accreditation function of ABFSE is recognized by the U.S. Department of Education and the Council on Higher Education Accreditation. The Bureau approves the two programs in California that are accredited by the ABFSE. The schools are reviewed

by the ABFSE's Committee on Accreditation at specific intervals, with a maximum of seven years between reviews. Shorter durations of accreditation may be awarded based on any deficiencies a program may need to correct. The last accreditation of both schools in California was granted for seven years. The Bureau indicates that it would remove its approval of the school if it were not accredited by the ABFSE or otherwise nonoperational as a result of sanctions imposed by the ABFSE. The Bureau of Private Postsecondary Education does not have any role in approving mortuary science programs at this time, as both degree-granting mortuary science programs are offered through community colleges.

## **Enforcement**

The Bureau reports that performance measures for enforcement activities are defined 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 Bureau's enforcement analysis or the Bureau's field investigation unit.

There are no mandatory reporting requirements for the Bureau. 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.

### ***Enforcement Timeframes***

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.

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 468 days in FY 2015–16, an average of 519 days in FY 2016–17, and an average of 641 days in FY 2017–18 to complete a case from the time the complaint was received until the matter was adjudicated.

The Bureau reports that there were three cases in FY 2017-18 that increased the target timeframe in this area. One case (three licenses) involved drafting two amended accusations due to subsequent investigations. In addition, there was a hearing continuance and the proposed decision was not adopted by the DCA. The second case (three licenses) required a supplemental investigation prior to submission for formal disciplinary action. While one party settled, the remaining licensee proceeded to an administrative hearing. The third case (two licensees) involved multiple investigations prior to submission for formal disciplinary action.

The tables on the next pages reflect the Bureau's enforcement actions and activities in the past three years.

<b>Enforcement Statistics</b>			
	FY 2015-16	FY 2016-17	FY 2017-18
<b>COMPLAINT</b>			
Intake			
*Received	565	689	686
Closed	3	3	4
Referred to INV	563	686	681
Average Time to Close	2	2	2
Pending (close of FY)	0	0	1
Source of Complaint			
Public	313	411	429
Licensee/Professional Groups	21	16	9
Governmental Agencies	12	16	23
Other	380	361	303
Conviction / Arrest			
*Conviction Received	161	115	78
Conviction Closed	161	115	78
Average Time to Close	1	1	2
CONV Pending (close of FY)	0	0	0
<b>LICENSE DENIAL</b>			
License Applications Denied	7	3	4
SOIs Filed	4	1	1
SOIs Withdrawn	1	2	0
SOIs Dismissed	0	0	0
SOIs Declined	0	0	0
Average Days SOI	139	87	85
<b>ACCUSATION</b>			
Accusations Filed	4	7	4
Accusations Withdrawn	1	2	0
Accusations Dismissed	1	0	1
Accusations Declined	0	0	0
Average Days Accusations	180	69	163
Pending (close of FY)	3	3	13
<b>DISCIPLINE</b>			
Disciplinary Actions			
Proposed/Default Decisions	4	4	1
Stipulations	7	2	5
Average Days to Complete	468	519	641
AG Cases Initiated	4	12	13
AG Cases Pending (close of FY)	9	9	16
Disciplinary Outcomes			
Revocation	6	6	2
Voluntary Surrender	4	1	3
Suspension	0	0	0
Probation with Suspension	1	0	0
Probation	10	2	7
Probationary License Issued	0	0	0
Other	0	0	0

<b>PROBATION</b>			
<i>New Probationers**</i>	11	5	7
<i>Probations Successfully Completed</i>	3	2	4
<i>Probationers (close of FY)**</i>	23	21	21
<i>Petitions to Revoke Probation</i>	1	1	0
<i>Probations Revoked</i>	0	2	0
<i>Probations Modified</i>	0	1	1
<i>Probations Extended</i>	0	0	0
<i>Probationers Subject to Drug Testing</i>	N/A	N/A	N/A
<i>Drug Tests Ordered</i>	N/A	N/A	N/A
<i>Positive Drug Tests</i>	N/A	N/A	N/A
<i>Petition for Reinstatement Granted</i>	0	0	0
<b>DIVERSION</b>			
<i>New Participants</i>	N/A	N/A	N/A
<i>Successful Completions</i>	N/A	N/A	N/A
<i>Participants (close of FY)</i>	N/A	N/A	N/A
<i>Terminations</i>	N/A	N/A	N/A
<i>Terminations for Public Threat</i>	N/A	N/A	N/A
<i>Drug Tests Ordered</i>	N/A	N/A	N/A
<i>Positive Drug Tests</i>	N/A	N/A	N/A
<i>"Intake Received" plus "Conviction Received" total the "Source of Complaint Received"</i>			
<i>**Probationers may include multiple licenses placed on probation as the result of a single pleading and/or respondent.</i>			

<b>Enforcement Statistics (continued)</b>			
	FY 2015-16	FY 2016-17	FY 2017-18
<b>INVESTIGATION</b>			
All Investigations			
First Assigned	723	801	745
Closed	738	800	743
Average days to close	44	36	38
Pending (close of FY)	74	77	79
Desk Investigations*			
Closed	561	599	584
Average days to close	21	16	21
Pending (close of FY)	28	25	25
Non-Sworn Investigation			
Closed	175	203	158
Average days to close	117	93	102
Pending (close of FY)	48	50	53
Sworn Investigation			
Closed	0	0	1
Average days to close	0	0	191
Pending (close of FY)	0	0	1
<b>COMPLIANCE ACTION</b>			
ISO & TRO Issued	0	0	0
PC 23 Orders Requested	0	0	0
Other Suspension Orders	0	0	0
Public Letter of Reprimand	0	2	0
Cease & Desist/Warning**	280	278	193
Referred for Diversion	N/A	N/A	N/A

Compel Examination	N/A	N/A	N/A
<b>CITATION AND FINE</b>			
Citations Issued	145	152	167
Average Days to Complete	35	32	29
Amount of Fines Assessed	\$80,754	\$68,602	\$57,050
Reduced, Withdrawn, Dismissed	\$1,200	\$7,400	\$2,200
Amount Collected	\$67,391	\$51,350	\$57,950
<b>CRIMINAL ACTION</b>			
Referred for Criminal Prosecution	0	0	0
*Note: Desk Investigations are conducted by an enforcement analyst. Complaints that require a field investigation are transferred to a nonsworn field representative.			
**Informal warning letter issued to licensee as closure of inspection/investigation.			

<b>Table 10. Enforcement Aging</b>						
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Cases Closed	Average %
<b>Attorney General Cases Closed (Average %)</b>						
Closed Within:						
1 Year	6	6	7	1	20	39.22%
2 Years	10	8	3	3	24	47.06%
3 Years	1	2	2	1	6	11.76%
4 Years	0	0	0	1	1	1.96%
Over 4 Years	0	0	0	0	0	0.00%
Total Attorney General Cases Closed	17	16	12	6	51	100%
<b>Investigations (Average%)</b>						
Closed Within:						
90 Days	561	604	689	658	2,512	82.85%
180 Days	116	95	104	59	374	12.34%
1 Year	67	36	7	25	135	4.45%
2 Years	8	1	0	1	10	0.33%
3 Years	1	0	0	0	1	0.03%
Over 3 Years	0	0	0	0	0	0.00%
Total Investigation Cases Closed	753	736	800	743	3,032	100%

### ***Prioritization of Disciplinary Cases***

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.

Since the Bureau's last sunset review in 2014, the Bureau reports that there has been a decrease in the number of administrative actions, license revocations, and the issuance of citations. The Bureau indicates that it strives for consistency in its interpretation and application of the laws and regulations. An exit interview is part of every inspection, and education and information to licensees during investigations is ongoing. The Bureau reports that it is also involved in outreach efforts with consumers, educating them with information about how to protect themselves when purchasing

cemetery and funeral merchandise and services. According to the Bureau, the decrease in disciplinary actions may be attributed to these efforts resulting in a higher compliance. Overall, the number of complaints has increased slightly since the last review. The Bureau’s total complaints during the last review period totaled 1,908 complaints. This review reflects that the Bureau received a total of 1,940 complaints from FY 2015-16 through the FY 2017-18.

***Stipulated Settlements***

The Bureau, working through the AG’s Office, enters into stipulated settlements with licensees that can result in probation, suspension, and or voluntary surrender of a license. The Bureau states that consumer protection is of the highest priority and stipulated settlements provide a way to appropriately discipline a licensee without compromising consumer protection. Probation includes standard terms and conditions and oftentimes includes optional conditions such as specific training or community service. In the past four years, there have been 18 cases that were settled, compared to 21 cases that resulted in a hearing before an administrative law judge. Additionally 13 cases resulted in default decisions.

***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 seriousness of the violation, along with the inspection and/or enforcement history of the licensee. The Bureau has the authority to issue administrative citations and assess monetary fines to any licensee or registrant for violation of its statutes or regulations governing their practice; fine amounts range from \$100 to \$5000 for violations. Below is a table of monetary fines assessed and collected for the last four fiscal years.

<b>FISCAL YEAR</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
Fines Assessed	\$83,529	\$80,754	\$68,602	\$57,050
Collected*	\$82,646	\$66,141	\$51,350	\$57,950
*The amount collected may include fines assessed and paid for the current fiscal year and prior fiscal years.				

The following are the five most common violations for which the Bureau issues citations:

<b>Code/Section</b>	<b>Description</b>
California Code of Regulations § 1204	Failure of the designated (funeral director) to manage/supervise
California Code of Regulations § 2388	Failure to file annual (cemetery) trust report

California Code of Regulations § 1258.1	Price ranges on the General Price List and Casket Price List do not match casket offerings on the Casket Price List
Business and Professions Code § 7680	Failure to post all current/renewal licenses
Business and Professions Code § 7685	Failure to include all caskets offered for sale on the Casket Price List

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 \$7,962. Most licensees pay their fines at the time of licensee renewal, and the fine is added to the renewal fee 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.

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

The Bureau's statutes of limitations are set in statute and based upon the license type. The Cemetery and Funeral Act (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 and Funeral Act (BPC § 7711) specifies that the Bureau has three years from the occurrence of an alleged act to file an accusation. Further, BPC § 7705 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 limitations.

### ***Licensure Revocation and Continued Care of Cemetery Facilities***

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 § 7653.1 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 posted quarterly. A list of administrative citations issued by the Bureau are posted quarterly, after all appeal timeframes have passed.

***Cost Recovery and Restitution***

The Bureau’s request to recover costs for investigation and prosecution in disciplinary cases is a standard part of each administrative action that is sent to the AG’s Office and the Bureau will attempt to recover costs to the fullest extent possible under BPC section 125.3. The Bureau includes cost recovery settlement discussions with respondents and indicates that it has been successful in recovering costs both in stipulated settlements and when ordered by an administrative law judge. When a respondent stipulates to a revocation of his or her license, the Bureau includes the payment of cost recovery as a prior condition for consideration of any petition for license reinstatement or the issuance of a new license. Since the last sunset review, the Bureau indicates that there have been no changes affecting the Bureau’s authority to seek cost recovery under BPC section 125.3.

In terms of restitution for consumers, the Bureau may either seek monetary or nonmonetary restitution. Monetary restitution includes refunds in the form of money or credit, or an adjustment to the cost of services or merchandise. Examples of nonmonetary restitution could be a request for paperwork, such as a contract, additional copies of death certificates, or an apology from the respondent. The Bureau reports that a common complaint from consumers alleges that a licensee failed to fulfill a contract for services or merchandise as specified in the contract, or failed to fulfill the contract in a professional manner. The Bureau explains that it will have its enforcement analyst contact the licensee and explain the issues involving the contract and may seek restitution from the licensee in a form of a refund (monetary) or a commitment to fulfill the contract (nonmonetary) for the consumer. The Bureau also reports that investigations by its field representatives may also include efforts to obtain restitution for consumers, as appropriate. For instance, as the Bureau points out, if a consumer was charged more for a service or item that was identified on the General Price List or a consumer was dissatisfied with the embalming of the decedent, the Bureau would seek a refund for the consumer.

The following tables include both cost recovery for the Board as well as restitution attempted for consumers from both mediation efforts and formal investigations.

<b>Table 11. Cost Recovery</b>				
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Total Enforcement Expenditures*	\$161,472	\$191,536	\$189,465	\$44,898
Potential Cases for Recovery**	8	9	3	6
Cases Recovery Ordered	3	7	3	4
Amount of Cost Recovery Ordered	\$9,900	\$35,832	\$13,713	\$34,499
Amount Collected	\$5,297	\$26,604	\$10,014	\$28,534

\* "Total Enforcement Expenditures" includes the total cost of legal services and hearings for all cases referred to the AG (including Statements of Issues). Expenditures for fiscal years 2014-16 through 2016-17 from CALSTARS report; expenditures for fiscal year 2017-18 from FISCAL, through May 2018  
 \*\* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation(s) of the License Practice Act.

**Table 12. Restitution**

<b>Mediated Restitution Data</b>	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Refunded to Consumers	\$39,405	\$53,292	\$38,682	\$38,044
Rework	\$421	\$6,133	\$11,912	\$11,263
Adjustments	\$11,707	\$53,483	\$1,605	\$3,271
<b>Total Savings to Consumers</b>	<b>\$51,533</b>	<b>\$112,908</b>	<b>\$52,199</b>	<b>\$52,578</b>
<b>Court Ordered Restitution Data</b>				
Amount Ordered	0	0	0	0
Amount Collected	n/a	n/a	n/a	n/a

**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 and are made via phone, e-mail, fax and through online services. As long as all of the required disclosures and documents are provided and a contract is signed, there is nothing that prohibits this type of transaction.

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.

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 1,060 currently 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 representatives, located throughout the State, are responsible for conducting inspections and investigations of licensed funeral establishments, cemeteries, and crematories. The Bureau reports that field representatives 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 Federal Trade Commission Funeral Rule 453, and a statement that the GPL is available upon request via a link from the home page. The information must be provided by a link containing the words or combination of words to include “goods”, “merchandise”, “products”, or “services”. Alternatively, a funeral establishment may post its GPL with a link from its home page with the words “price information” or a similar phrase that includes “price” that leads to the 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 the provisions of BPC § 7685. Searching the Internet allows the Bureau's field representative 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 Department of Insurance 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 § 7613.3 and 16 CCR § 1267 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, consumer complaints, or for any reason if the funds appear to be at risk of possible abuse or noncompliance.

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.

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

The Bureau was last reviewed on March 18, 2015, by the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee. During the previous sunset review, the Committees raised 13 issues. Below are actions which have been taken over the last four years to address a number of these issues and problem areas identified by the Committees. In December, 2018 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 the Committees. 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 Committees include the following:

**Issue #1: LONG TERM FUND CONDITION. Should the Bureau consider merging its two funds?**

The Committees recommended that the Bureau should merge its two separate special funds in an effort to streamline administrative costs and reduce administrative burdens and to provide a healthy reserve level.

Effective July 1, 2016, AB 180 (Bonilla, Chapter 395, Statutes of 2015) merged the Bureau's two separate special funds, known as the Cemetery Fund and the State Funeral Directors and Embalmers Fund into one special fund, the Cemetery and Funeral Fund.

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

The Committees asked that the Bureau to explain the basis upon which pro rata is calculated and the methodology for determining how the pro rata will be paid from the two funds (now the one fund). The Bureau indicated that its pro rata costs have fluctuated only slightly over the past four fiscal years and that it continues to monitor its pro rata costs and works with the DCA to implement changes and make improvements where necessary. The Bureau argues that it relies on the DCA to provide a wide range of services that are utilized throughout the state, including programmatic and administrative services that are essential to the Bureau's mission and that the Bureau does not have the necessary resources to provide these services and relies on the support of the DCA. The Bureau also had an opportunity to participate in a pro rata survey in 2015 as part of an independent study conducted by CPS HR Consulting, required by SB 1243 (Lieu, Chapter 395, Statutes of 2014).

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

The Funeral Rule 453 requires that "funeral providers" produce a GPL which includes identifying information about the various goods and services that are sold along with other important disclosures. However, in 2013 the media reported that there was a "lack of uniformity in funeral price lists oftentimes keeping consumers from making smart price comparisons." In response, SB 658 (Negrete Mcleod, Chapter 386, Statutes of 2011) was passed which included BPC section 7685 to enhance disclosure requirements by specifically requiring 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 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.

To verify compliance with this requirement, the Bureau reported that it includes BPC section 7685 as part of its inspection protocol, and field staff review any applicable website for compliance prior to the inspection of each funeral establishment. Deficiencies are cited as a violation on the inspection report and discussed with the licensee after the inspection. Additionally, the Bureau investigates all complaints alleging violations of this section. A comprehensive review of all inspection and investigation reports is conducted by either an enforcement analyst or supervisor who conducts another search of the website for verification of compliance. For violations of the Bureau's laws or regulations, the Bureau can issue a warning letter or an administrative citation with or without the assessment of a fine and/or an abatement order. Depending upon the

circumstances, abatement can be considered satisfactory resolution of the violation cited. Repeated offenses of the same violation or egregious violations can result in subsequent citations with increased fines, or even formal administrative disciplinary action, such as probation or license revocation.

**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?**

In 2011, the Bureau began to work on updating its regulations, starting with non-substantive, technical clean-up for both the cemetery and funeral regulations. From there, the Bureau focused its efforts on developing cemetery maintenance standards, required by SB 1490 (Ducheny, Chapter 401, Statutes of 2006), which took effect in 2012. The Bureau worked concurrently on Limited Liability Company (LLC) regulations for cemeteries, and another regulation package to update more of the funeral regulations. After amending the funeral citation and fine regulations, the Bureau immediately began working on updating the cemetery citation and fine regulations to raise the maximum fine amount to \$5,000 (as authorized by BPC § 125.9). Ideally the Bureau reported that it would have liked to work on both funeral and cemetery regulations together; however, the LLC regulations, which were extremely complex, were a priority (required by SB 1225, Harman, Chapter 114, Statutes of 2008) and staffing resources limited the number of regulatory packages the Bureau could pursue at any given time. The Bureau finally increased its cemetery citation and fine penalties through the rulemaking process, with the amended regulations taking effect on January 1, 2016.

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

The Bureau reported that it is mandated to conduct at least one unannounced inspection of each licensed cemetery every year and investigates complaints against cemeteries in response to consumer complaints. The Bureau indicated that it can, and does, monitor cemeteries more closely when circumstances warrant. Additionally, BPC section 7612.6 requires cemeteries to file an annual report regarding the amount collected for endowment care funds (ECF – a trust fund which is made up of contributions collected from the sale of interment property and used to maintain the cemetery property) and special care funds (SCF – 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 these annual reports and assesses any potential risk to the funds.

According to the Bureau, cemetery maintenance standards were developed to help ensure that cemetery property is kept in a condition to prevent the cemetery’s offensive deterioration. Under current law, endowment care cemetery properties must have minimum standards for cemetery maintenance. Furthermore, CCR section 2333 requires a disclosure on (cemetery) consumer contracts that maintenance standards are available for inspection in the cemetery office; cemeteries must provide a copy of the standards, for retention, upon request.

Endowment care fees for cemeteries are specified in the Health and Safety Code and must be collected at the completion of the initial sale of the interment property. Only the income generated from the ECF can be used to provide regular care and maintenance of the cemetery.

AB 180 (Bonilla, Chapter 395, Statutes of 2015) required the Bureau to conduct a study on the sufficiency of endowment care funds used by cemeteries for future operations and report its findings to the policy committees of the Legislature on or before January 1, 2018. The report was submitted to the Legislature on December 29, 2017.

The Bureau reported that when a cemetery license is revoked, it prohibits the owner from selling any interment space, vaults, markers, monuments, or conducting any other activity related to sales in the cemetery. The Bureau does not take control of the property; it becomes a local land use issue. Because the cemetery is a private business, the land owner may still be subject to and responsible for compliance with any local ordinances or laws. The law does, however, allow the Bureau to approve interments in the cemetery for decedents who have a prepaid contract for an interment space in that cemetery.

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

The Bureau reported that its website provides information about disciplinary actions against licensees through the online license verification feature. The information includes the license status and any disciplinary action. Consumers can also access disciplinary actions and administrative citations through a link from its homepage (Enforcement & Disciplinary Actions), which allows them to view all disciplinary actions and administrative citations in one place, by year, and select the license records that they may want to view. The Bureau posts disciplinary actions when the documents become public records. A list of administrative citations issued by the Bureau are posted quarterly, after all appeal timeframes have passed.

**Issue #7: TERMINATION OF THE BREEZE CONTRACT – RELEASE THREE. How does the termination of the BreEZe contract impact the Bureau?**

According to the Bureau, it was originally scheduled for the third release of BreEZe, but is now participating in DCA’s Business Modernization Plan. The Bureau indicates that it is working closely with DCA and, in collaboration, has developed a Project Charter and a Business Modernization Report to identify business processes in support of the Bureau’s IT modernization initiative. This will allow the Bureau to ultimately migrate to a new IT platform, with an estimated implementation date of 2022. In the interim, the Bureau is working with DCA on a project to accept online credit card payments for license renewals for those entities not on BreEZe.

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

The Bureau indicates that the composition of its Advisory Committee has taken on many forms since it was first created and established more than 10 years ago. Over the last six years, it has remained consistent with seven members, four representing the industry and three public members. Committee members are appointed for two-year terms, with the option to be appointed for one additional term. When selecting members, the Bureau reported that it considers the goals of its strategic plan and pending projects and evaluates the appropriate composition with an emphasis on consumer protection while realizing the value of industry expertise. Professional members provide invaluable expertise to regulators in determining impacts to the regulated community. The Advisory Committee is not statutorily mandated. Members, who volunteer on

their own time and at their own expense, serve in an advisory capacity, only making nonbinding recommendations directly to the Bureau Chief.

Even with aggressive recruitment efforts, the Bureau points out that it typically receives minimal applications from which to select its Committee members. For the 2013-2015 recruitment, the Bureau received 21 complete applications (5 from public members and 16 from industry members); for the 2015-2017 recruitment, the Bureau received 10 complete applications (3 from public members and 7 from industry members); for the 2018-2020 recruitment, the Bureau received 18 complete applications (5 from public members and 13 from industry members). For the 2018-2020 recruitment, the potential members were interviewed (via telephone) by DCA's Office of Board and Bureau Services. The Bureau maintains that it will continue to evaluate its Advisory Committee configuration and make adjustments as necessary.

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

Since its last sunset review, the consumer satisfaction survey has been updated. Over the last three fiscal years, approximately 13 percent of consumers responded to one or more of the survey questions as either 'poor' or 'very poor'. Although this outcome is a significant improvement from the Bureau's last sunset review (during which 27 percent of consumers expressed some dissatisfaction with the resolution of their complaints), the Bureau stated that it continues its efforts to improve these outcomes through staff training and streamlining its processes to ensure complaints are resolved timely. The Bureau further stated that it uses the feedback from the surveys to improve its customer service in an effort to further reduce the percentage of unfavorable responses.

The Bureau argues that it makes every effort to resolve complaints to consumers' satisfaction; however, some consumer complaints are not supportable by law or regulation. For example, they may not have realized the conditions of a contract they signed, or they may want a refund that they are not entitled to. In these circumstances, consumers may be unavoidably dissatisfied with the outcome of the Bureau's investigation. When the Bureau is unable to assist a consumer, they refer them to the appropriate organization for assistance, if one exists.

Additionally, the Bureau continues to review specific comments that consumers include in their surveys to help identify ways to improve or change its processes, or to recognize staff when they have received positive comments about the service they provided. When adverse comments are received for a specific complaint, the Bureau's lead field representative is assigned to review the complaint to determine if further action is warranted. The Bureau's field staff and enforcement analysts have ongoing training to ensure the accurate interpretation and application of the laws and regulations. Also, there are ongoing discussions about communicating with vulnerable consumers during difficult times.

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

The Bureau reported that it keeps abreast of industry changes and trends through a variety of sources. Its Advisory Committee is comprised of both industry members and public members and is a valuable resource that allows the Bureau to obtain input on emerging issues in the profession as well as any concerns from the public. The Bureau's field representatives conduct inspections in

assigned regions of the state and have contact with licensees on a regular and on-going basis. This provides an opportunity for direct communication with licensees and a first-hand look at what may be new or upcoming changes in the industry. All the Bureau's field representatives previously worked as licensees in the industry and are knowledgeable about the profession and what may be evolving in the future. Furthermore, California has two colleges with a mortuary science program with staff who regularly communicate with the Bureau on a variety of topics related to the industry, and the Bureau routinely attends the Advisory Committee meetings of both mortuary science schools.

AB 967 (Gloria, Chapter 846, Statutes of 2017) now requires the Bureau to license and regulate hydrolysis facilities and hydrolysis facilities managers beginning July 1, 2020. With this law, consumers now have another form of disposition to choose from, in addition to burial or cremation. (Alkaline hydrolysis is a process using heat or heat and applied pressure, water, and potassium hydroxide or sodium hydroxide in a hydrolysis chamber to reduce the body of a deceased person to its essential organic components and bone fragments.) The Bureau is currently drafting regulatory language to implement this law and has established timelines to meet the July 1, 2020 implementation date.

The Bureau indicates that it will continue to monitor the industry for trends that may require a statutory or regulatory change and evaluate those trends with consumer choices and protection in mind.

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

Because the enforcement issues concerning third-party casket retailers and proprietary employees of religious corporations have been minimal over the past four years, it does not appear that additional studies are necessary at this time. According to the Bureau, BPC section 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/controlled by religious entities are referred to the appropriate religious body for resolution. In fiscal years 2015-16, 2016-17, and 2017-18, the Bureau received 16 non-jurisdictional complaints against religious cemeteries and one non-jurisdictional complaint against a third-party casket retailer. Complainants were referred to the governing body of the religious entity (for religious cemeteries) and the applicable district attorney's office (for third-party casket retailers). The Bureau maintains that its resources would be better utilized focusing its efforts on consumer protection and the activities currently regulated by the Bureau.

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

AB 180 (Bonilla, Chapter 395, Statutes of 2015) required the Bureau to conduct a study on the sufficiency of endowment care funds used by cemeteries for future operations and report its findings to the policy committees of the Legislature on or before January 1, 2018. The report

was submitted to the Legislature on December 29, 2017, and includes the following information:

- Scope and methodology used for evaluating endowment care sufficiency;
- Historical information about minimum deposits for endowment care cemeteries;
- Comparison of minimum endowment care trust deposits rates across states; and
- Results of the data collected and a recommendation to increase endowment care fund deposits and a follow-up study in five years.

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

The Committee’s recommendation was that licensing and regulation of the cemetery and funeral industry continue to be regulated to protect consumers. The Bureau agrees with the recommendation and remains committed in its efforts to advocate consumer protection and licensee compliance through proactive education and consistent interpretation and application of the laws governing the death-care industry.

**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:

- Beginning July 1, 2020, for the Bureau to license and regulate hydrolysis facilities and hydrolysis facilities manager. Enacts requirements applicable to hydrolysis facilities similar to those applicable to crematoriums.
- 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 study on the sufficiency of endowment care funds used by cemeteries for future maintenance.
- Conducted a cost analysis study on the Bureau’s fees to establish a fee cap for the next ten years.
- Implemented annual inspections of licensed cemeteries and crematories.
- 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 2018.” This report is available on its website at [http://www.cfb.ca.gov/about\\_us/sunsetreview\\_2018.pdf](http://www.cfb.ca.gov/about_us/sunsetreview_2018.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 Committees, and other areas of concern for the Committees to consider, along with background information concerning the particular issue. There are also recommendations by staff of the Committees which have been 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: (PRO RATA) Why do pro rata costs fluctuate each year from a high of \$798,000 in FY 2013/14, to a low of \$589,000 in FY 2016/17? Should there not be a steady increase or stabilization of pro rata costs?**

**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, drafting contracts, 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 Committees, 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 charts on the next page show the DCA pro rata expenditures for the last eight FYs charged to the Cemetery Fund and the State Funeral Directors and Embalmers Fund, and then in 2016 to the Cemetery and Funeral Fund once the two funds were combined. The Bureau generally anticipates spending roughly 18% to 20% of its budget on pro rata each year. Although other entities under the DCA are charged a higher percentage of pro rata costs, such as the Bureau of Security and Investigative Services, which spent approximately 44% of its budget in FY 2018/19 on private security services, the pro rata expenditures have fluctuated for certain years from a high of \$798,000 in FY 2013/14, to a low of \$589,000 in FY 2016/17, yet there are other agencies within DCA that have experienced a steady increase in their pro rata costs.

Pro Rata Expenditures					
	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.*

Pro Rata Expenditures					
	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	Totals
Cemetery	\$326,000	\$358,000	\$0	\$0	\$0
Funeral Directors and Embalmers	\$432,000	\$241,000	\$0	\$0	\$0
Total	\$758,000	\$599,000	\$589,000	\$671,000	\$2,617,000

*This table was taken from the Bureau's 2018 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 Cemetery and Funeral Fund under the Bureau's jurisdiction.*

**ISSUE #2: (ENDOWMENT CARE FUNDS)** Should the deposit rates as specified in Health and Safety Code Section 8738 be increased and should the Bureau conduct a follow-up study, and provide a follow-up report to the appropriate policy committees of the Legislature by January 1, 2023.

**Background:** As already indicated, AB 180 (Bonilla, Chapter 395, Statutes of 2015) directed the Bureau to conduct a study to obtain information to determine if the endowment care levels of each cemetery the Bureau licenses are sufficient to cover the cost of future maintenance. It required the Bureau to review the levels of endowment care that had previously been reported by the cemeteries, and report its findings and recommendations to the appropriate policy committees of the Legislature by January 1, 2018. To formulate its methods, the Bureau invited the endowment care cemeteries it licenses to attend a November 2015 workshop to discuss potential approaches. From this workshop, a smaller focus group of industry experts was subsequently formed which included 55 licensed cemeteries. In August 2016, the Bureau met with the focus group to discuss its plan of approach. The focus group assisted the Bureau in developing its study methods which included the following activities:

- Developing a questionnaire to obtain information from each cemetery.
- Identifying key financial information necessary for the study.

- Discussing the mathematical formulas and assumptions necessary to evaluate endowment care sufficiency, and identifying the future actions necessary to help ensure an adequate level of endowment care income for long-run cemetery maintenance.

Any cemetery established after September 7, 1955 is required to be an endowment care cemetery (HSC section 8739.1) unless exempt from licensure pursuant to HSC § 8250. An endowment care cemetery is one in which a portion of the price consumers pay for graves or other interment spaces is deposited into an endowment care fund. Income generated from the fund may be used to care for the cemetery, including performing 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 section 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 in the cemetery. The endowment care funds are to be collected no later than at completion of the initial sale. The intent of endowment care is to prevent cemeteries from falling into disrepair once all interment spaces have been sold. The Bureau has the authority to inspect and audit endowment care funds and BPC § 7612.6 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 long-term maintenance of a cemetery, there are instances where the maintenance of a cemetery may be in a greater need than endowment funds will allow.

The primary goal of the study as indicated by the Bureau, was to evaluate whether the endowment care trust fund levels of the cemeteries the Bureau licenses will likely be sufficient to cover the cost of maintenance once the cemeteries have sold all of the interment spaces and, working with experts from the cemetery industry, suggest recommendations that will help move the State forward to better ensure its privately owned cemeteries do not become un-kept places of reproach and desolation in the communities in which they are situated.

In terms of information it received from the cemeteries pursuant to its study, it was first explained that most of the 195 privately-owned cemeteries that Bureau licenses, 142 (or 73 percent) were established before the law requiring endowment care was enacted. Based on the language in the statute, these 142 cemeteries did not need to create endowment care trusts. Specifically, with a few exceptions, the law required any cemetery established on or after September 7, 1955 to be an endowment care cemetery, but did not grandfather-in cemeteries established before that date. As reported by the Bureau, 68 of the cemeteries the Bureau licenses were established before 1900, and 74 were established between 1900 and September 7, 1955, when the law began requiring endowment care. Of the 142 cemeteries, 4 of them never created endowment care trusts, but the other 138 opted-in and therefore became subject to the endowment care legal and regulatory requirements of the Bureau.

The Bureau reached the conclusion that although endowment care cemeteries deposit at least the minimum amounts required by law, there is still a substantial statewide shortfall. Actually, some deposited more than the minimum amount required by law, but it was still found that statewide the costs of maintaining California's privately-owned cemeteries exceeds the income generated from the cemeteries' endowment care trusts. The study pointed out that for at least 21 of the licensed cemeteries, endowment care income appears to be sufficient to cover the long-run costs of maintaining the endowment care spaces they have already sold, but for the large majority of licensed cemeteries, the endowment care income is not sufficient to cover the endowment care spaces they have already sold, and long-run sufficiency will require more significant trust growth. The Bureau recommended an increase in the minimum endowment care deposit rates specified in HSC § 8738.

**Staff Recommendation:** *The Bureau should give a brief description of the endowment care study it completed in December of 2017, and the recommendations that it is making to ensure there are sufficient moneys available from the trust funds to cover the future maintenance and care of these licensed cemeteries.*

---

**ISSUE #3: (COST ANALYSIS OF LICENSING FEES) Should the Legislature set the fee cap for the Bureau at a 10 year projected maximum.**

**Background:** As part of a plan to maintain its fiscal integrity, the Bureau engaged Capital Accounting Partners (CAP), to prepare a detailed cost analysis of its fees. The Bureau reported that its objectives for the study were to ensure that the Bureau is fully accounting for all of its costs and recovering adequate revenues to be reimbursed for its expenses. CAP indicated that the Bureau's only sources of revenue are fees charged for each of the various licenses and reports. Thus, the Bureau is fully self-supporting so it is vital that the fees charged to licensees fully recover the costs of the program. The scope of the study included the following objectives:

- Calculate the full cost of licenses;
- Determine a fair and equitable method of allocating non-fee expenses, such as enforcement, to each license type;
- Develop revenue projections for 10 years out to set the cap; and
- Review performance of core business processes.

CAP's primary data sources were budgeted expense data for FY 2016/17, time estimates for Bureau staff to process each license type, broken down by core processes or activities including such activities as inspections of establishments, review of license application and audit review when necessary. Also included was activity data such as the annual number of licenses issued/processed by type for certain fiscal years.

After calculating the full cost of each specific license, Bureau management established a pricing scenario that reflected the true cost of fees to perform its functions and help ensure a sustainable regulatory program. As pointed out by CAP, this pricing model raises prices on some licenses and keeps others at the current fee level.

According to CAP, the primary observation is that the Bureau has a history of conservative financial management and is taking a proactive step in this regard. By assessing its fees before a financial emergency, the Bureau is assuring its long-term sustainability and strengthening its ability to provide a high level of service to its constituents for the future. CAP maintains that one of the most important outcomes of a study of fees is a policy to adjust fees regularly. Bureau staff generally receive regular cost of living adjustments, cemetery and funeral establishments adjust their prices based on inflationary and market forces, and fees should be adjusted regularly as well.

CAP provided a 10 year forward projection of fees based on an annual increase of 3 percent. CAP recommended that the Bureau work with the State Legislature to set the cap at the 10 year projected maximum. Then adjusting fees annually or at least bi-annually to maintain alignment of revenues and expenditures. CAP also recommended a formal audit of fees at the 5 year mark as processing and regulatory requirements can change dramatically within this time frame.

**Staff Recommendation:** *The Bureau and Capital Accounting Partners should give a brief description of the cost analysis licensing fee study which it completed on November 2016, and the recommendations that it is making to ensure there are sufficient moneys available to cover the expenses of operating the Bureau's program.*

## **TECHNOLOGY ISSUE**

**ISSUE #4:** (BreEZe) As a Release 3 entity, what is the status of BreEZe?

**Background:** BreEZe 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 completed 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 was 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 would not transition to the BreEZe system. Currently, the technology upgrade, intended by BreEZe, is on hold as the DCA, California Department of Technology and Department of General Services determine the appropriate next steps.

According to the Bureau, it was originally scheduled for the third release of BreEZe, but is now participating in DCA’s Business Modernization Plan. The Bureau indicates that it is working closely with DCA and, in collaboration, has developed a Project Charter and a Business Modernization Report to identify business processes in support of the Bureau’s IT modernization initiative. This will allow the Bureau to ultimately migrate to a new IT platform, with an estimated implementation date of 2022. In the interim, the Bureau is working with DCA on a project to accept online credit card payments for license renewals for those entities not on BreEZe.

To date, the Bureau has spent approximately \$261,583 to prepare for the BreEZe system transition. 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." 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:** *What are the current costs that the Bureau has already expended or will be expending in anticipation of BreEZe and can any of those costs be recuperated? 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 and what new IT system they anticipate they will utilize.*

### **ADMINISTRATIVE ISSUE**

#### **ISSUE #5: (PET CEMETERY CREMATIONS) Should the Bureau be responsible for regulating the cremation of pets?**

**Background:** Back in December we were contacted by a Ms. Hillarie Levy about the cremation of two of her dogs. They each died about a year apart but she said the remains she received seemed out of proportion to their actual weights. She believes that consumers may have been misled about the

cremated remains they receive of their dogs and has proposed a legislative fix to more properly regulate those that are providing pet cremation services. Ms. Levy believes that the Veterinary Medical Board should be responsible for the oversight of the animal cremation industry in California – and proposed that the Board should increase licensing and registration fees for veterinarians and related businesses in order to cover the costs of the oversight. Her legislative proposal would also require the cremation facilities to install cameras to document and maintain records of the cremation process for each animal and impose fines on facilities that do not comply with the proposal.

We checked in with the Veterinary Medical Board as Ms. Levy argued that she felt they might be the more appropriate agency to deal with the problem. We asked them to put her on their agenda for their January 23<sup>rd</sup> meeting to discuss. They did discuss the issue, but it looks like the Veterinary Medical Board wants to turn this responsibility over to the Cemetery and Funeral Bureau to regulate any establishment or facility that would perform pet cremations. As stated by the Veterinary Medical Board, “Currently in California, the Department of Consumer Affairs, Cemetery and Funeral Bureau regulates human cremation services by licensing cremated remains disposers, crematories, and crematory managers. However, there appears to be a lack of oversight related to animal cremations.”

The Veterinary Medical Board directed the Executive Officer of the Board to facilitate a meeting between the Legislature, the Board and the Bureau to discuss such a proposal and provide better oversight. A meeting was recently held on February 21<sup>st</sup>, it was decided. . .

**Staff Recommendation:** *This is an area that appears to need the oversight of the Bureau to assure that a pet owner will always receive the ashes of a dog that was originally theirs and not of someone else’s remains. Can the Bureau explain why it can or cannot provide this type of regulatory oversight?*

## **LICENSURE ISSUE**

### **ISSUE #6: (DELINQUENT LICENSES) Why is there such a large number of delinquent licenses?**

**Background:** For funeral directors, out of 2,274 active licensees in FY 17/18, there were 521 considered as delinquent licenses. For licensed embalmers, there were 1,561 active licensees and 358 licenses considered as delinquent. For Cemetery Salespersons there were 4,936 active licensees in FY 17/18 and 625 considered as delinquent licensees. This seems like a large number of licensees that are designated as being in a delinquent status.

**Staff Recommendation:** *Can the Bureau explain why there is such a large number of licensees who are considered in a delinquent status and to break down who may still be pending to receive licensure or those whose license may have expired?*

## **ENFORCEMENT ISSUE**

**ISSUE #7: (MAINTENANCE OF CEMETERIES) Are there cemeteries which are failing to meet minimum maintenance standards such as assuring that markers of graves are always visible?**

**Background:** On February 7, 2019, NBC Channel 4 in the Bay Area reported that hundreds, perhaps thousands, of graves at one of Southern California's most famous cemeteries appear to have vanished and that many relatives of those buried there decades ago, including celebrities and war veterans, were unaware of the situation until contacted by the Investigative Team of Channel 4 (I-Team).

During the investigation by I-Team of Pierce Brothers Valhalla Cemetery in North Hollywood, it was found that a complaint was filed against Pierce Brothers with the Bureau that they were letting graves get buried over violating state law, which says that cemeteries must "trim or mow grass. . .to a level where markers of graves can be seen." The Bureau investigated the complaints and found Pierce Brothers was in violation of the law for "failing to meet minimum maintenance" standards. The Bureau issued a warning, but there was no penalty. Because the cemetery was not charged, a second complaint was filed on April, 2018. This time the Bureau concluded that the grounds were "mowed and well landscaped" and closed the investigation. The I-Team, however, returned to Pierce Brothers every month for the past six months and continued to find numerous graves buried by dirt and weeds. Pierce Brothers owner, Service Corporation International (SCI) told the I-Team it's now undertaking numerous improvements at the cemetery. In a statement to I-Team, SCI stated it has an ongoing program to uncover grave markers, has hired a new gopher abatement company, and now has a full-time water technician. But I-Team still found that the grave of a war veteran is once again covered by inches of dirt and grass, invisible to all.

**Staff Recommendation:** *Can the Bureau explain why this lack of oversight continues for at least this one specified cemetery and may there be others that are not properly maintaining their cemetery facilities? How often does the Bureau actually inspect these cemetery premises and should it be done more often if staff is available?*

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

**ISSUE #8: (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.*