

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 593

2023 Regular Session

Riser

CEMETERIES: Provides relative to cemeteries

Synopsis of Senate Amendments

1. Provides that the administrative director and the cemetery board's employees shall not carry out discretionary duties or actions that are solely prescribed to the board.
2. Removes requirements for a majority vote of board members to perform certain board actions.
3. Restores present law relative to the board's authority to conduct public or private investigations within or outside of the state.
4. Provides that actions or claims brought under present law shall be filed within the limitations of present law.
5. Removes preemptive periods for certain actions.
6. Requires cemetery authorities to notify the board of change of business year within 30 days of change.
7. Clarifies that if the board fails to prove that a certain group is not in compliance with the requirements of present law or the alleged violation is de minimis then the board shall not recover any costs, fees, or any expenses incurred by it and shall be responsible for paying all reasonable costs, fees, or expenses incurred by the group who was accused of not being in compliance.
8. Changes prescriptive limitations on disciplinary proceedings.
9. Makes technical changes.

Digest of Bill as Finally Passed by Senate

Present law (R.S. 8:61(A)) creates the La. Cemetery Board (board). Present law further provides that the board is within the office of the governor and consists of seven members appointed by the governor.

Proposed law retains present law and provides that a majority vote of the members present for a quorum constitutes as an act of the board.

Present law (R.S. 8:64) provides that officers from among the board's members are elected by the board. Present law also provides that the board may employ, fix the salary and prescribe the duties of an administrative director and other employees.

Proposed law retains present law and adds that the administrative director and other employees of the board shall not carry out discretionary duties or actions that are solely prescribed to the board pursuant to present law.

Present law (R.S. 8:66.1) authorizes the board, to perform certain functions for the purpose of discovering a violation of present law or implementing rules or order issued pursuant to

present law.

Proposed law adds to present law to include any of the following actions that the board may take:

- (1) Take testimony to investigate violations of the present law and proposed law.
- (2) Appoint two or more members to investigate violations.
- (3) Implement rules or orders.
- (4) Hold informal hearings for alleged violations.
- (5) Investigate certain persons under the jurisdiction of the board.
- (6) Failure to comply with a subpoena to appear, apply to a court to require a person to appear before the board.

Proposed law provides that the board may act by a majority vote to do the following:

- (1) Dismiss a complaint or call for a formal hearing. (R.S. 8:66.2(B))
- (2) Determine an applicant's compliance with rules and regulations. (R.S. 8:71)
- (3) Suspend or revoke certificates of authority. (R.S. 8:72)
- (4) Impose fines, refuse to grant a certificate of authority, and institute legal proceedings. (R.S. 8:75)
- (5) Institute proceedings to enjoin certain persons. (R.S. 8:458)
- (6) Determine that an endowment or perpetual care fund is in danger, in compliance with present law (Cemetery Care Fund and the Louisiana Trust Code). (R.S. 8:465)

Proposed law (R.S. 8:66.1(C) through (E)) provides certain procedures for formal hearings and legal proceedings.

Present law (R.S. 8:66.2(A)) provides that the board or attorney general may issue cease and desist orders under certain circumstances. Present law further provides that the order remains in effect until the order is final or overturned by a hearing.

Proposed law changes present law and requires the board to conduct an investigation prior to issuing a cease and desist order. Proposed law states that the order may be overturned by the board following a request for hearing.

Present law (R.S. 8:67) provides that the board may establish necessary rules and regulation and those rules and regulations should not be in conflict with present law.

Proposed law expands present law to include other applicable law.

Proposed law (R.S. 8:79) provides that no action or claim based on or arising out of a violation of present or proposed law or any rules or regulations of the board shall be brought unless a complaint is issued by the board in accordance with present and proposed law or legal proceedings are filed as is provided in present and proposed law.

Present law (R.S. 8:454.1) provides that the income on a principal trust fund shall be used for the purposes of care to portions of the cemetery.

Proposed law retains present law and adds that cemetery care includes the expenses

necessary to carry out the administration of the trust. Proposed law provides that all funds held in trust for perpetual care purposes shall be administered by the trustee in accordance with this Chapter and the Louisiana Trust Code.

Present law (R.S. 8:455) requires all cemeteries to file with the trustee an annual report.

Proposed law (R.S. 8:455 and 505(C)) retains present law and adds that the business year is any consecutive 12-month period that is determined by the cemetery authority and designated in the report. Further provides that the board shall be notified of a change of business year within 30 days of the effective date of change.

Proposed law (R.S. 8:456(D)) further provides that the 12-month period should be the same for the trustee's report and the cemetery authority's report.

Present law (R.S. 8:461(A)) provides that the board shall examine endowment care funds of each cemetery authority at certain times.

Proposed law adds the set time to examine endowment funds to once every three years or when the board identifies a possible violation.

Proposed law (R.S. 8:463) changes the board's access to the books and records of endowment or perpetual care funds from free to reasonable access. Proposed law also provides the grounds for which the board can request access to books and records after an objection.

Proposed law (R.S. 8:506) amends certain permissions by the board to carry out compliance examinations.

Proposed law (R.S. 8:467 and 512) requires certain compliance examination reports from the board.

Present law (R.S. 8:464) provides that the board is responsible for costs, fees, or expenses incurred, if the board cannot prove that certain groups are not in compliance.

Proposed law retains present law and clarifies that if the alleged violation is de minimis, the board shall be responsible for all costs, expenses, and fees, including legal and accounting fees.

Present law (R.S. 37:21(B)(4)) permits the board to initiate a proceeding of any kind under certain circumstances.

Proposed law repeals present law.

Proposed law makes technical changes.

(Amends R.S. 8:61(A), 64, 66.1, 66.2(A), 67, 69.2(C)(8), 71, 72(A), 75(A), (B), and (C), 454.1(A), 455, 458, 461(A), 463, 464(A)(3), 465(A)(intro. para.) and (D), 467, 506(A) and (C)(1)(a); Adds R.S. 8:79, 456(D), 505(C), 506(D), and 512; Repeals R.S. 37:21(B)(4))