

RÉSUMÉ DIGEST

ACT 381 (HB 593)

2023 Regular Session

Riser

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

New law retains existing law and also provides that a majority vote of the members present for a quorum constitutes an act of the board.

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

New law 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 existing law.

Existing law (R.S. 8:66.1) authorizes the board to perform certain functions for the purpose of discovering a violation of existing law or implementing rules or orders issued pursuant to existing law.

New law adds to existing law to include any of the following actions that the board may take:

- (1) Take testimony to investigate violations of existing law and new 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) Apply to a court to require a person to appear before the board after failure to comply with a subpoena to appear.

New law provides that the board may act by a majority vote to do any of the following:

- (1) Dismiss a complaint or call for a formal hearing. (R.S. 8:66.1(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 existing law (Cemetery Care Fund and the La. Trust Code). (R.S. 8:465)

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

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

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

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

New law expands existing law to include other applicable law.

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

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

New law retains existing law and adds that cemetery care includes the expenses necessary to carry out the administration of the trust and the net income of the fund shall be paid to the cemetery authority. New law provides that all funds held in trust for perpetual care purposes shall be administered by the trustee in accordance with existing law and the La. Trust Code.

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

New law (R.S. 8:455 and 505(C)) retains existing 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. New law further provides that the board shall be notified of a change of business year within 30 days of the effective date of change.

New 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.

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

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

New 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. New law also provides the grounds for which the board can request access to books and records after an objection.

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

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

Existing 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.

New law retains existing 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.

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

New law repeals prior law.

New law makes technical changes.

Effective date August 1, 2023.

(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))