

1 §61. Cemetery board created; appointments; terms

2 A. The Louisiana Cemetery Board is hereby created and shall be placed
3 within the office of the governor. The board shall consist of seven members
4 appointed by the governor. There shall be at least one member from each public
5 service commission district existing at the time of the appointments and two
6 members at large, who shall all be residents of Louisiana. Any change in the total
7 membership or district of the public service commission shall not affect the term of
8 any duly appointed member, but subsequent appointments shall be made so as to
9 conform with membership and districts of the commission existing at the time of the
10 subsequent appointments. The domicile of the board shall be in the parish of
11 Jefferson. A majority of the board members shall constitute a quorum for all
12 meetings. Unless provided otherwise in this Title, if a quorum is present when a vote
13 is taken, the affirmative vote of the majority of the members present is the act of the
14 board.

15 * * *

16 §64. Officers; administrative director; employees

17 The board shall elect a chairperson, vice chairperson, and such other officers
18 as it shall determine, from among its members. Each officer shall serve until his
19 successor is elected and takes office. It may employ, fix the salaries, and, except as
20 provided in this Section, prescribe the duties of an administrative director and such
21 clerical, technical, and other employees as are necessary to carry out its duties. The
22 administrative director and other employees of the board shall not be prescribed any
23 duties or perform any actions which are prescribed to the board pursuant to this Title.

24 * * *

25 §66.1. Investigations

26 A. ~~The board may, for~~ For purposes of discovering a violation of this
27 Chapter or implementing rules or orders issued pursuant to this Title, the board, by
28 a majority vote of its members, may perform any of the following:

1 (1) ~~Make such public or private investigations within or outside of this state~~
2 ~~as the board deems necessary to determine whether any person has violated this~~
3 ~~Title, or implement rules or orders issued pursuant to this Title, or to aid in the~~
4 ~~enforcement of this Title, or in the prescribing of rules and forms under this Title.~~
5 Take testimony concerning matters under its jurisdiction. The board, through its
6 presiding officer, may issue subpoenas to enforce the attendance of witnesses, and
7 administer oaths to witnesses.

8 (2) Appoint two or more of its members as the board deems necessary to
9 determine whether any person has violated this Title.

10 (3) Implement rules or orders that are issued pursuant to this Title.

11 (4) Call for an informal hearing to ascertain facts of an alleged violation of
12 any provision of this Title.

13 (2) (5) Require or permit any person to file a statement in writing, under
14 oath, by affidavit or by authentic act, as the board or attorney general determines, as
15 to all the facts and circumstances concerning the matter being investigated.

16 (3) (6) Investigate a person subject to the jurisdiction of the board and
17 examine ~~the~~ his books, accounts, papers, correspondence, memoranda, purchase
18 agreements, files, or other documents or records: relevant or material to aid in the
19 enforcement of this Title.

20 (4) (7) Subpoena witnesses, compel their attendance, take evidence, and
21 require the production of any books, accounts, papers, correspondence, memoranda,
22 purchase agreements, files, or other documents or records which the board deems
23 relevant or material to any investigation or proceeding under pursuant to this Title.

24 (5) (8) Apply to a district court of competent jurisdiction for an order
25 requiring a person's appearance before the board ~~or attorney general, or a designee~~
26 ~~of either or both,~~ in cases where the person has refused to obey a subpoena issued by
27 the board ~~or attorney general.~~ The person may also be required to produce
28 documentary evidence ~~germane~~ relevant or material to the subject of the
29 investigation.

1 B. The board, by majority vote of its members, shall determine whether to
2 dismiss a complaint or call for a formal hearing.

3 C. If a formal hearing is called by the board, parties to the alleged violation
4 and complaint shall be present either voluntarily or by subpoena. A proper legal
5 record of the hearing shall be required in a manner legally accepted in judicial
6 proceedings. After hearing and reviewing the evidence presented, the board by a
7 majority vote of its members, within a reasonable time, shall render a decision and
8 issue its decision and orders to all parties.

9 D. The board shall determine whether to institute legal proceedings
10 authorized by this Title and how to respond to any legal proceedings to which the
11 board is a party, including all decisions regarding appeal and settlement. The board
12 shall stay fully informed as to all pending investigations, formal hearings and legal
13 proceedings.

14 E.(1) The administrative director of the board shall submit a written report
15 to the board including either of the following:

16 (a) Information that comes to the attention of the staff that may constitute
17 a violation of this Title.

18 (b) Information that may be grounds for a complaint resulting in suspension,
19 revocation, fine, or penalty.

20 (2) Such report shall be updated monthly until the matter is acted upon by
21 the board as provided in Subsection B of this Section.

22 §66.2. Cease and desist orders

23 A. If it appears to the board ~~or to the attorney general~~ after conducting an
24 investigation in accordance with R.S. 8:66.1 that a person has engaged in an act or
25 practice constituting a violation of this Title, or the implementing of rules or orders
26 issued in accordance with this Title, the board or the attorney general may issue a
27 cease and desist order directed to the person that requires the person to cease and
28 desist from engaging in such an act or practice. A person may request a hearing
29 within thirty days of actual receipt of the cease and desist order, as evidenced by the

1 date on the return service. If a hearing is not timely requested, the cease and desist
2 order shall become final by operation of law. The order shall remain effective from
3 the date of issuance until the date the order becomes final by operation of law or is
4 overturned by ~~a hearing officer authorized to hear the matter~~ the board following a
5 request for hearing.

6 * * *

7 §67. Rules and regulations

8 The board may establish necessary rules and regulations for the
9 administration and enforcement of this Title and prescribe the form of statements and
10 reports provided for in this Title, but such rules and regulations shall not be in
11 conflict with or contrary to any of the provisions of this Title or of the
12 Administrative Procedure Act, R.S. 49:950 et seq. or applicable law.

13 * * *

14 §69.2. Receiverships; procedure; powers, duties, and qualifications; disposition of
15 cemetery

16 * * *

17 C.

18 * * *

19 (8) The receiver shall also have all of the powers granted to receivers under
20 R.S. ~~12:151~~ 12:1-1432 et seq.

21 * * *

22 §71. Proof of applicant's compliance with law, rules and regulations; financial
23 responsibility and reputation

24 The board, by a majority vote of its members, shall determine that the
25 applicant and its officers, directors, owners, and managerial personnel are financially
26 responsible, trustworthy, and have good personal and business reputations, in order
27 that only cemeteries of permanent benefit to the community in which they are
28 located will be established in this state. The board may require such proof as it
29 deems advisable concerning the compliance by such applicant with all the laws,

1 rules, regulations, ordinances, and orders applicable to it. If the board refuses to
2 grant an applicant a certificate of authority, it shall inform the applicant in writing
3 by registered or certified mail of the reasons therefor and the applicant shall be
4 entitled to a hearing, if requested by the applicant in writing within thirty days of
5 receipt of the denial. The hearing shall be conducted in accordance with the
6 provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

7 §72. Certificates; regulatory charges; suspension; restoration; late charge;
8 requirement of certificate

9 A. The regulatory charges for a certificate of authority at all periods of the
10 year are the same as provided in this Chapter. All regulatory charges shall be
11 payable at the time of the filing of the application and prior to issuance of the
12 certificate. All certificates issued by the board shall be valid unless suspended or
13 revoked by a majority vote of the board. However, failure to pay the regulatory
14 charge fixed by the board prior to the first day of February for any year shall effect
15 the suspension of the certificate of authority, which may be restored upon payment
16 of the prescribed charge, and an additional late charge of fifty percent of the amount
17 of the prescribed regulatory charge or one hundred dollars, whichever is lesser.

18 * * *

19 §75. Refusal to grant, revocation, or suspension of certificate; injunction; fines;
20 additional orders

21 A. For violation of any provision of this Title or the rules or regulations
22 adopted and promulgated by the board in accordance with the Administrative
23 Procedure Act, the board, by a majority of its members, may, ~~in addition to imposing~~
24 impose fines, refuse to grant, revoke, or suspend a certificate of authority and may
25 institute legal proceedings to enjoin any person from operating or conducting a
26 cemetery business.

27 B. ~~If the board finds that one or more grounds exist for the discretionary~~
28 ~~suspension or revocation of a certificate of authority issued pursuant to the~~
29 ~~provisions of this Chapter, it may, in lieu of or in addition to the suspension or~~

1 a provision for perpetual or endowed care, including the expenses necessary to carry
 2 out the purposes and administration of the trust. It is the intent of this Section that
 3 the net income of the fund shall be paid to the cemetery authority and used
 4 exclusively ~~used solely~~ for the care of interment spaces sold with a provision for
 5 perpetual or endowed care and for the care of other portions of the cemetery
 6 immediately surrounding the spaces as may be necessary to preserve the beauty and
 7 dignity of the spaces sold. The fund or its income shall never be used for the
 8 development, improvement, or embellishment of unsold portions of the cemetery so
 9 as to relieve the cemetery authority of the ordinary cost incurred in preparing such
 10 property for sale. All funds held in trust for perpetual care purposes shall be
 11 administered by the trustee in accordance with this Chapter and the Louisiana Trust
 12 Code.

* * *

14 §455. Annual report by cemeteries

15 All cemeteries subject to the provisions of this Chapter shall file with the
 16 trustee, as defined in this Chapter, not later than ninety days after the close of the
 17 business year, a report setting forth the volume and the gross selling price of sales
 18 upon which a deposit with the trustee is required by this Chapter. For the purposes
 19 of this Chapter, the business year is any consecutive twelve-month period determined
 20 by the cemetery authority and designated in the report. The cemetery authority may
 21 change its business year by filing an interim report for a period less than twelve
 22 months.

23 §456. Annual report by trustee; final accounting by trustee required

* * *

25 D. The annual report by the trustee shall be for the same period as the report
 26 received from the cemetery authority report pursuant to R.S. 8:455.

* * *

1 §458. Prohibited acts; injunctions

2 No person or cemetery authority shall offer for sale or sell any interment
3 space in any cemetery with a provision for perpetual or endowed care, or in any
4 manner represent, advertise, or hold out to the public that the cemetery, or any
5 portion thereof, is entitled to perpetual or endowed care, unless such person or
6 authority has complied with the provisions of this Chapter. The board, by a majority
7 vote of its members, may institute legal proceedings to enjoin any person or
8 cemetery authority from violating the provisions of this Section.

9 * * *

10 §461. Examination of endowment funds; expenses

11 A. The board shall examine the endowment care funds of each cemetery
12 authority governed by the provisions of this Title, including those organized before
13 and after August 1, 1962, at the following time or times:

14 (1) ~~Whenever it deems necessary but at least once~~ Once every three years.

15 (2) Whenever the board determines there is good cause to believe that a
16 violation of this Chapter has occurred.

17 ~~(2)~~ (3) Whenever the cemetery authority or trustee in charge of endowment
18 or perpetual care funds fails to file the reports required by this Chapter.

19 ~~(3)~~ (4) Whenever the board is requested by verified petition signed by
20 twenty-five individual interment space owners, alleging that the endowment or
21 perpetual care funds are not in compliance with this title, in which case the
22 examination shall be at the expense of the petitioners.

23 * * *

24 §463. Powers, duties, records, concerning examination of funds

25 In making such examination, the board shall:

26 ~~(1)~~ A. Have ~~free~~ reasonable access to the books and records relating to the
27 endowment or perpetual care funds, their collection and investment, and the number
28 of interment spaces under endowment or perpetual care. Such books and records
29 shall be made available for examination in the principal office of the cemetery

1 authority or trustee located within the state of Louisiana; Any request for access to
2 books and records, which the trustee or cemetery authority objects to as being
3 unreasonable, irrelevant, arbitrary, or capricious, shall be produced only after the
4 objections are ruled upon by the board after notice and hearing.

5 ~~(2)~~ B. Inspect and examine the endowment or perpetual care funds to
6 determine their condition and the existence of the investments; ~~and.~~

7 ~~(3)~~ C. Ascertain if the cemetery authority has complied with all laws
8 applicable to endowment or perpetual care funds.

9 §464. Action required when authority fails to deposit minimum endowment or
10 perpetual funds

11 A. If an examination made by the board, ~~or any report filed with it,~~ shows
12 that there has not been collected and deposited in the endowment or perpetual care
13 fund the minimum amounts required by this Title, the board shall require such
14 cemetery authority to comply immediately with such requirement.

15 * * *

16 (3) Notwithstanding any other provisions of law, if the board fails to prove
17 that the cemetery authority or other responsible party is not in substantial compliance
18 with the requirements of this Section or the alleged violation is technical in nature
19 without causing harm, then the board shall not recover any costs, fees, or any
20 expenses incurred by it and shall be responsible for paying all reasonable costs, legal
21 and accounting fees, or expenses incurred by the cemetery authority or responsible
22 party who was accused of not being in compliance.

23 §465. Order requiring reinvestment in compliance with law; actions for preservation
24 and protection

25 A. All funds held in trust for perpetual care purposes shall be administered
26 by the trustee in compliance with this Chapter and the Louisiana Trust Code with
27 such skill and care as a ~~man~~ person of ordinary prudence, discretion, and intelligence
28 would exercise in the management of his own affairs, not in regard to speculation but

1 in regard to the permanent disposition of his funds, considering the probable income
2 as well as the probable safety of his capital, subject to the following restrictions:

3 * * *

4 D. Whenever the board, ~~has reason to believe that~~ by a vote of the majority
5 of its members, has determined that due to a violation of this Chapter, endowment
6 or perpetual care funds are in danger of being lost or dissipated during the time
7 required for notice and hearing, it may immediately apply to the district court of the
8 parish in which the cemetery is located for any order which appears necessary for the
9 preservation and protection of endowment or perpetual care funds, including but not
10 limited to immediate substitution of trustees. Notwithstanding any other provisions
11 of law, if the board fails to prove that due to a violation of this Chapter, endowment
12 or perpetual care funds were in danger of being lost or dissipated, it shall be
13 responsible for paying all reasonable costs, legal and accounting fees, and expenses
14 incurred by the cemetery authority or responsible party who was accused of not
15 being in compliance.

16 * * *

17 §467. Examination of reports

18 The board shall examine the reports filed with it as to their compliance with
19 the requirements of the law. Any formal hearing, court proceeding, or other cause
20 of action against a cemetery authority or trustee based on any report filed by it shall
21 be commenced within one year of discovery of the violation or three years from the
22 date the report is filed with the board, whichever occurs first. This period shall be
23 preemptive.

24 * * *

25 §505. Annual reports by trustee; final accounting by trustee required

26 * * *

27 C. For purposes of this Chapter, the business year is any consecutive twelve-
28 month period determined by the cemetery authority as designated in the report. The

1 cemetery authority may change its business year by filing the report for a period less
2 than twelve months.

3 * * *

4 §506. Examination by board; expenses

5 A. The board may examine the relevant business books and records
6 identified in Subsection (C) of this Section of any cemetery authority or other entity
7 that is engaged in making contracts for the sale of personal property or services as
8 contemplated in this Chapter at the following time or times:

9 (1) ~~Whenever it deems necessary but at least once~~ Once every three years.

10 (2) Whenever the board determines there is a good cause to believe that a
11 violation of this Chapter has occurred.

12 ~~(2)~~ (3) Whenever the cemetery authority, other entity, or trustee in charge
13 of merchandise trust funds fails to file the reports required by this Chapter.

14 ~~(3)~~ (4) Whenever the board is requested by verified petition signed by
15 twenty-five individuals purchasing personal property or services alleging that the
16 cemetery authority or other entity is not in compliance with this Chapter, in which
17 case the examination shall be at the expense of the petitioners.

18 * * *

19 C. In making such examination, the board shall:

20 (1)(a) Have ~~free~~ reasonable access to the books and records relating to the
21 merchandise trust funds, their collection and investment, and individual contracts for
22 the sale of personal property or services as described in this Chapter.

23 * * *

24 D. Any requests for access to books and records, which the trustee, cemetery
25 authority, or other entity objects to as being unreasonable, irrelevant, arbitrary, or
26 capricious, shall be produced only after the objections are ruled upon by the board
27 after notice and hearing.

28 * * *

1 §512. Examination of reports

2 The board shall examine the reports filed with it as to their compliance with
3 the requirements of the law. Any formal hearing, court proceeding, or other cause of
4 action against a cemetery authority or trustee based on any report filed by it shall be
5 commenced within one year of discovery of the violation or three years from the date
6 the report is filed with the board, whichever occurs first. This period shall be
7 preemptive.

8 Section 2. R.S. 37:21(B)(4) is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 593 Engrossed

2023 Regular Session

Riser

Abstract: Provides for the general oversight of the La. Cemetery Board and procedures for cemetery care trust funds.

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 duties that are solely prescribed to the board pursuant to present law.

Present law (R.S. 8:66.1) authorizes the board, in part, to make public or private investigations of certain violations within or outside the state.

Proposed law repeals present law in part with respect to authorizing the board to make public or private investigations within or outside of the state, but proposed law provides instead that the board may perform any of the following by majority vote:

- (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) Require or permit a person to file a statement on matters being investigated.
- (6) Investigate certain persons under the jurisdiction of the board.
- (7) Subpoena witnesses.
- (8) Require a person's appearance in court.

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 applicants 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. (R.S. 8:465)

Proposed law (R.S. 8:66(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 retains present law and requires the board to conduct an investigation prior to issuing a cease and desist order, and 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 for certain actions for violations of present 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.

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.

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 3 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. 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)(intro. para.) and (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))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Add that the board shall be responsible for reasonable costs, legal and accounting fees, and expenses if the board fails to prove that a cemetery authority was not in compliance.
2. Add that the board shall be responsible for reasonable costs, legal and accounting fees, and expenses if the board fails to prove that due to a violation, certain care funds were in danger of being lost or dissipated.
3. Add that any requests for access to records that an entity objects to as unreasonable, irrelevant, arbitrary, or capricious, shall be produced only after objections are ruled on by the board.
4. Remove proposed law relating to the merger of trust funds.
5. Make technical changes.