

2015 Regular Session

HOUSE BILL NO. 592

BY REPRESENTATIVE RITCHIE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CEMETERY/BOARD: Provides relative to regulatory rates for certain cemetery board matters

1 AN ACT

2 To amend and reenact R.S. 8:70, 73, 75(A) and (B), 78, 201, 403, 456(A), 461(A)

3 (introductory paragraph) and (2) and (B), 462, 466, 506(B), and 606(A) and to enact

4 R.S. 8:705.1, relative to cemetery authorities; to increase certain regulatory,

5 application, and examination fees established by the Louisiana Cemetery Board; to

6 authorize the board to impose certain fines; to provide for exempt certificates of

7 authority; to provide for fees relative to renewal of exempt certificates of authority;

8 to clarify provisions relative to corporate entities engaged in cemetery business; to

9 provide relative to required content of annual reports of trustees and cemetery

10 authorities; to provide for application requirements and fees relative to sales of

11 cemetery space, rights of use, or interment in cemetery structures and gardens; to

12 provide for exemptions; to provide for technical corrections; and to provide for

13 related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 8:70, 73, 75(A) and (B), 78, 201, 403, 456(A), 461(A) (introductory

16 paragraph) and (2) and (B), 462, 466, 506(B), and 606(A) are hereby amended and reenacted

17 and R.S. 8:705.1 is hereby enacted to read as follows:

18 §70. Application for certificate of authority

19 The initial application for a certificate of authority, including without

20 limitation an application for a new certificate required by R.S. 8:76, shall be made

1 in writing by a cemetery authority to the board on a form prescribed by the board,
 2 accompanied by an application fee ~~of five hundred~~ set by the board not to exceed one
 3 thousand dollars. Applications for renewal of a valid, subsisting, and unsuspended
 4 certificate of authority shall be made in similar fashion, accompanied by the
 5 regulatory charge provided for in this Title. All initial applications must show that
 6 the cemetery authority owns or is actively operating a cemetery which is subject to
 7 the provisions of this Title.

8 * * *

9 §73. Regulatory charges; rate

10 A. Every cemetery authority shall pay, for each cemetery operated by it, an
 11 annual regulatory charge, as fixed by the board, of not more than five dollars for
 12 each interment, entombment, and inurnment made during the preceding full calendar
 13 year, but not less than ~~twenty-five~~ fifty dollars for each cemetery. Upon payment of
 14 ~~said~~ the applicable charges and compliance with the other provisions hereof and the
 15 rules and regulations of the board, the board shall issue a certificate of authority.

16 B. The board may increase the regulatory charge specified in Subsection A
 17 of this Section to not more than ~~eleven~~ twenty dollars to cover no more than the
 18 board's reasonable and ordinary expenses, including the cost of litigation.

19 * * *

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

22 A. For violation of any provision of this Title or the rules or regulations
 23 adopted and promulgated by the board in accordance with the Administrative
 24 Procedure Act, the board may, in addition to imposing fines, refuse to grant, revoke,
 25 or suspend a certificate of authority and may institute legal proceedings to enjoin any
 26 person from operating or conducting a 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 ~~under~~ pursuant to the
 29 provisions of this Chapter, it may, in lieu of or in addition to such suspension or

1 revocation, impose a fine upon the certificate holder in an amount not to exceed one
2 thousand dollars for each non-willful violation and in an amount not to exceed ten
3 thousand dollars for each willful violation, plus cost of the court reporter and the
4 attorney fees of the board.

5 * * *

6 §78. Exemptions; exempt certificates of authority; renewal; fees

7 A. The provisions of ~~this Chapter~~ R.S. 8:70, 71, 72, 73 and 76 shall not apply
8 to family burial grounds, fraternal cemeteries, municipal cemeteries, community
9 cemeteries, state cemeteries, federal cemeteries, or religious cemeteries that do not
10 sell cemetery spaces, sell the right of use or interment in any cemetery space, or
11 charge a maintenance fee per cemetery space for an amount in excess of three
12 hundred dollars.

13 B. The provisions of ~~this Chapter~~ R.S. 8:70, 71, 72, 73 and 76 shall not apply
14 to community cemeteries owned and operated by nonprofit corporations in existence
15 prior to January 1, 2007, whose officers and directors serve on a voluntary basis
16 without compensation for their services.

17 C. The provisions of ~~this Chapter~~ R.S. 8:70, 71, 72, 73 and 76 shall not apply
18 to columbarium facilities owned and operated by churches for the interment of
19 human remains.

20 D. Notwithstanding the provisions of this Section, every cemetery authority
21 or person, hereinafter in this Subsection referred to as the "applicant", seeking to be
22 identified as a cemetery or columbarium facility that is exempt pursuant to the
23 provisions of this Section, shall provide the board such proof as the board deems
24 necessary to determine whether an applicant meets the qualifications for exemption.
25 If the board determines that an applicant is qualified for exemption, the applicant
26 shall apply for an exempt certificate of authority on a form prescribed by the board,
27 accompanied by an application fee of two hundred fifty dollars to cover the board's
28 reasonable and ordinary expenses associated with determining whether the applicant
29 is in compliance with applicable provisions of this Title.

1 E.(1) No later than April 1 and in three year intervals thereafter, any
2 cemetery authority or person holding an exempt certificate of authority shall apply
3 for renewal of the certificate by submitting to the board such information as the
4 board deems necessary to determine if the cemetery authority or person continues
5 to meet the qualifications for exemption, in addition to a renewal fee of fifty dollars
6 to maintain the exemption previously granted.

7 (2) Failure to submit the required information or pay the prescribed renewal
8 fee by April 1 of the respective renewal interval shall affect the suspension of the
9 applicable exempt certificate of authority. The board shall assess a late charge of
10 twenty-five dollars to any cemetery authority or person making the submission of
11 information and payment of the prescribed fee after April 1 of the respective renewal
12 interval.

13 (3) The board may reinstate a suspended exempt certificate of authority after
14 April 1 of the respective renewal interval, if the cemetery authority or person submits
15 to the board the required information, payment of the prescribed renewal fee, and the
16 assessed late charge of twenty-five dollars.

17 F. At any time, if the board determines a cemetery authority or person no
18 longer meets the qualifications to maintain an exempt certificate of authority, such
19 cemetery authority or person shall begin the process of applying for a nonexempt
20 certificate of authority, as required by this Chapter, within thirty days of receipt of
21 written notice of the board's determination of nonexemption.

22 * * *

23 §201. Incorporation required

24 It is unlawful for any corporation, partnership, firm, trust, association, or
25 individual to engage in or transact any of the businesses of a cemetery within this
26 state except by means of a corporation authorized to operate a cemetery. Such
27 corporation shall only engage in the cemetery business in this state if it has received
28 a certificate of authority from the board pursuant to the provisions of Chapter 2 of

1 ~~this title~~ Title. The provisions of this Section shall not apply to a family burial
2 ground as defined in R.S. 8:1(22).

3 * * *

4 §403. Application fee; annual fee

5 The application shall be accompanied by an initial filing fee of ~~fifty two~~
6 hundred fifty dollars for each cemetery sales organization and each cemetery
7 management organization. An annual fee of a like amount shall be paid. If ninety
8 percent or more of the applicant is owned by an existing cemetery authority
9 operating under the provisions of this Title, then the initial filing fee, as well as the
10 annual fee, shall be one-half of the sums set out herein.

11 * * *

12 §456. Annual ~~account~~ report by trustee; final accounting by trustee required

13 A.(1) Not later than sixty days after the receipt of the report required by R.S.
14 8:455, the trustee shall file with the board, with a copy to the clerk of the district
15 court for the parish in which the cemetery is located, an annual ~~account~~ report on a
16 form prescribed by the board ~~showing in detail~~ setting forth all of the following:

17 (a) All receipts and disbursements of cash, ~~and all receipts and deliveries of~~
18 other trust property during the regular business year of ~~said~~ the cemetery authority,
19 ~~and shall set forth~~ a detailed list of all items of trust property in the trust at the end
20 of each ~~said~~ year.

21 (b) A statement showing the total amount of the endowment and perpetual
22 care trust funds invested in each of the investments authorized by law, and the
23 amount of cash on hand not invested.

24 (2) The report shall be verified by the president or vice president and one
25 other officer of the cemetery authority.

26 * * *

1 §461. Examination of endowment funds; expenses

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

5 * * *

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

8 * * *

9 B. The expense of the examination as provided herein shall not exceed ~~fifty~~
10 two hundred fifty dollars per day for each examiner engaged in the examination, but
11 when the examination requires more than two days, the cost shall be paid by the
12 cemetery authority in an amount not to exceed a total of five hundred dollars, unless
13 irregularities are found, in which case the cemetery authority shall pay the full cost
14 of the examination. The examination shall be privately conducted in the principal
15 office of the cemetery authority or trustee.

16 §462. Examination expense; effect of refusal to pay; disposition

17 If a cemetery authority refuses to pay examination expenses, the board ~~shall~~
18 may refuse it a certificate of authority and ~~shall~~ may revoke any existing certificate
19 of authority.

20 * * *

21 §466. Annual report of cemetery authority; ~~contents, verification, certification~~
22 contents; fees

23 A. Each cemetery authority that has sold interment space subject to
24 endowment or perpetual care, including those cemetery authorities organized before
25 and after August 1, 1962, shall file with the board annually, on or before the thirtieth
26 day of June, a written report ~~in form~~ on a form prescribed by the board setting forth
27 all of the following:

1 ~~(1) The amount collected for and deposited in the endowment or perpetual~~
2 ~~care fund from the inception of the board to the thirty-first day of December of the~~
3 ~~preceding year; and,~~

4 ~~(2) A statement showing the total amount of the endowment and/or perpetual~~
5 ~~care funds invested in each of the investments authorized by law and the amount of~~
6 ~~cash on hand not invested, which statement shall show the actual financial condition~~
7 ~~of the funds.~~

8 (1) The number of contracts written in the reporting period for the sale of
9 interment spaces or interment rights.

10 (2) The amount of gross sales or receipts from contracts of sales of all
11 interment spaces or interment rights and the amount of any discounts.

12 (3) The amount of gross sales or receipts from perpetual care contracts, if
13 any, sold separately from interment spaces or interment rights.

14 (4) The fair market value of interment spaces or interment rights provided
15 without charge.

16 (5) The amount of deposits due the endowment or perpetual care trust fund
17 for the reporting period and the dates the funds were deposited with the trustee.

18 B. The report shall be verified by the president or vice president and one
19 other officer of the cemetery authority and shall be certified by the accountant or
20 auditor preparing the same.

21 C. The cemetery authority shall pay to the board a report filing fee of not
22 more than five dollars for each contract subject to endowment or perpetual care
23 entered into in the annual report period, as specified in Subsection A of this Section.
24 Report filing fees shall be due and payable at the time of filing the report and shall
25 be used to cover the board's reasonable and ordinary expenses. Failure to pay report
26 filing fees within six months after the close of the business year shall result in a late
27 charge assessed by the board to the cemetery authority in the amount of one hundred
28 dollars.

29 * * *

1 §506. Examination by board; expenses

2 * * *

3 B. The expense of the examination as provided herein shall not exceed ~~fifty~~
4 two hundred fifty dollars per day for each examiner engaged in the examination, but
5 when the examination requires more than two days, the cost shall be paid by the
6 cemetery authority or other entity in an amount not to exceed a total of five hundred
7 dollars, unless irregularities are found, in which case the cemetery authority or other
8 entity shall pay the full cost of the examination.

9 * * *

10 §606. Commencement and completion requirements; application form; application
11 fee

12 A.(1) Prior to the first sale of a cemetery space or the right of use or
13 interment in any cemetery space in a structure which has not yet been constructed,
14 the cemetery authority shall submit to the board all of the following:

15 ~~(1)~~(a) A copy of the preliminary plans.

16 ~~(2)~~(b) A map or plat delineating the sections, blocks, plots, avenues, walks,
17 halls, rooms, corridors, elevations, or other subdivisions, with descriptive name or
18 numbers.

19 ~~(3)~~(c) A copy of all sales promotion material.

20 ~~(4)~~(d) A copy of the pre-construction sales contract.

21 (2) The cemetery authority shall submit the information required in this
22 Subsection on an application form prescribed by the board, accompanied by an
23 application fee of two hundred fifty dollars to cover the board's reasonable and
24 ordinary expenses associated with determining compliance with applicable
25 provisions of this Title.

26 * * *

27 §705.1. Commencement requirements; application form; application fee

28 A.(1) Prior to the first sale of a cemetery space or the right of use or
29 interment in any cemetery space in a garden which has not yet been developed, the
30 cemetery authority shall submit to the board all of the following:

1 (a) A copy of the preliminary plans.

2 (b) A map or plat delineating the sections, blocks, plots, or other
3 subdivisions with descriptive names or numbers.

4 (c) A copy of all sales promotion material.

5 (d) A copy of the pre-construction sales contract.

6 (2) The cemetery authority shall submit the information required in this
7 Subsection on an application form prescribed by the board, accompanied by an
8 application fee of two hundred fifty dollars to cover the board's reasonable and
9 ordinary expenses associated with determining compliance with applicable
10 provisions of this Title.

11 Section 2. (A) This Section and all provisions as amended and reenacted and
12 enacted by Section 1 of this Act, except R.S. 8:78(E), shall become effective on August 1,
13 2015.

14 (B) The provisions of R.S. 8:78(E) as enacted by Section 1 of this Act shall become
15 effective on January 1, 2016.

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 592 Engrossed

2015 Regular Session

Ritchie

Abstract: Makes various changes to regulatory rates, application requirements, and fees applicable to cemetery authorities.

Present law requires cemetery authorities to submit to the La. Cemetery Board, hereinafter the "board", an initial application for a certificate of authority. Further requires initial applications to be made in writing on a form prescribed by board, accompanied by an application fee of \$500. Proposed law changes the \$500 fee of present law to one set by the board not to exceed \$1,000.

Present law requires cemetery authorities to pay to the board an annual regulatory charge of not more than \$5 for each interment, entombment, and inurnment for each cemetery operated by the cemetery authority, but not less than \$25 annually for each cemetery. Proposed law changes the \$25 annual minimum for each cemetery to \$50.

Present law authorizes the board to increase the \$5 annual regulatory charge for each interment, entombment, and inurnment to not more than \$11 to cover no more than the board's reasonable and ordinary expenses, including the cost of litigation. Proposed law changes the \$11 maximum regulatory charge per interment, entombment, or inurnment to \$20.

Present law authorizes the board to impose a fine upon the holder of a certificate of authority for both willful and non-willful violations of present law. Further authorizes the board to impose a fine in lieu of suspension or revocation of the certificate of authority. Proposed law retains present law and authorizes the board to impose a fine in addition to suspension or revocation of a certificate of authority for such violations.

Present law exempts certain cemetery authorities from the requirements of present law. Proposed law retains present law and specifies certain provisions for which exemptions from present law no longer apply.

Proposed law requires cemetery authorities or persons seeking exemption pursuant to present law and proposed law to provide the board with the following: (1) Proof as the board deems necessary to determine whether the cemetery authority or person meets the qualifications for exemption, (2) an application for an exempt certificate of authority on a form prescribed by the board, and (3) a \$250 application fee.

Proposed law requires the renewal of exempt certificates of authority in 2016. Further requires the holder of an exempt certificate of authority to apply for renewal of the certificate by submitting to the board, by April 1, 2016, and in 3-year intervals thereafter, the following: (1) Information as the board deems necessary to determine if the holder of an exempt certificate of authority continues to meet exemption qualifications, and (2) a \$50 renewal fee to maintain the exemption previously granted.

Proposed law provides for the board's suspension of an exempt certificate of authority, if the holder does not timely submit the required information or \$50 renewal fee to the board. Further provides for a \$25 late charge for the untimely submission of information and \$50 renewal fee.

Proposed law authorizes the board to reinstate a suspended exempt certificate of authority, if the holder submits to the board the required information, payment of the \$50 renewal fee, and \$25 late charge.

Proposed law provides that if at any time the board determines that the holder of an exempt certificate of authority no longer qualifies to maintain such certificate, the holder is required to apply for a nonexempt certificate of authority within 30 days of receipt of written notice of the board's determination of nonexemption.

Present law requires a corporation, partnership, firm, trust, association, or individual engaging in or transacting cemetery business within the state of La. to be a corporation authorized to operate a cemetery. Further requires such corporation to have a certificate of authority from the board. Proposed law retains present law and exempts family burial grounds from the incorporation requirement of present law.

Present law requires an application and initial filing fee of \$50 for each person licensed to operate a cemetery sales organization or cemetery management organization. Proposed law retains present law and changes the initial filing fee from \$50 to \$250.

Present law requires a cemetery authority trustee to provide an annual report to the board that sets forth the following: (1) All receipts and disbursements of cash, (2) all receipts and deliveries of other trust property during the regular business year, and (3) a detailed list of all items of trust property in the trust at the end of each year. Proposed law retains present law.

Proposed law requires the annual report of a cemetery authority trustee to be submitted on a form prescribed by the board and requires the report to set forth all of the following: (1) A statement showing the total amount of the endowment and perpetual care trust funds invested in each of the investments authorized by law, and (2) the amount of cash on hand not invested. Proposed law further requires the annual report to be verified by the president or vice president and one other officer of the cemetery authority.

Present law requires the board to examine endowment care funds of cemetery authorities at certain times provided in present law. Further requires an examination expense assessed to cemetery authorities not to exceed \$50 per day for each examiner. Proposed law retains present law and changes the maximum \$50 per day examination fee to a maximum of \$250 per day.

Present law requires the board to refuse a certificate of authority and revoke any existing certificate of authority, if a cemetery authority refuses to pay examination expenses. Proposed law changes present law to provide the board's discretion to refuse or revoke any existing certificate of authority, if a cemetery authority refuses to pay such examination expenses.

Present law requires cemetery authorities selling interment space, subject to endowment or perpetual care, to provide an annual report to the board setting forth the following contents: (1) The amount collected for and deposited in the endowment or perpetual care fund from the inception of the board to the 31st day of December of the preceding year, and (2) a statement showing the total amount of endowment or perpetual care funds invested. Proposed law deletes the annual report content requirements of present law.

Proposed law requires such cemetery authorities selling interment space, subject to endowment or perpetual care, to provide an annual report to the board setting forth all of the following: (1) The number of contracts written in the reporting period for the sale of interment spaces or interment rights, (2) the amount of gross sales or receipts from contracts of sales of all interment spaces or interment rights and the amount of any discounts, (3) the gross sales or receipts from perpetual care contracts, if any, sold separately from interment spaces or interment rights, (4) the fair market value of interment spaces or interment rights provided without charge, and (5) the amount of deposits due the endowment or perpetual care trust fund for the reporting period and the dates the funds were deposited with the trustee.

Present law requires annual reports of cemetery authorities selling interment space, subject to endowment or perpetual care, to be verified by the president or vice president and one other officer of the cemetery authority and certification by the preparing accountant or auditor. Proposed law retains present law.

Proposed law further requires the cemetery authority selling interment space, subject to endowment or perpetual care, to pay a report filing fee of not more than \$5 for each contract entered into to cover the board's reasonable and ordinary expenses. Report filing fees are due and payable when filing the report. Further provides that failure to pay report filing fees within 6 months after the close of the business year results in a \$100 late charge assessed by the board to the cemetery authority.

Present law authorizes the board to examine the business of any cemetery authority or entity engaged in making contracts for the sale of personal property or contemplated services at certain times provided in present law. Further requires an examination expense assessed to cemetery authorities not to exceed \$50 per day for each examiner. Proposed law retains present law and changes the maximum \$50 per day examination fee to a maximum of \$250 per day.

Present law requires cemetery authorities to submit certain information to the board prior to the first sale of a cemetery space or right of use or interment in a structure not yet constructed. Proposed law retains present law and provides for the information required in present law to be submitted on an application form prescribed by the board along with a \$250 application fee to cover the board's reasonable and ordinary expenses.

Proposed law requires cemetery authorities to submit the following to the board prior to the first sale of a cemetery space or right of use or interment in any cemetery space in a garden not yet developed: (1) A copy of the preliminary plans, (2) a map or plat delineating the

sections, blocks, plots, or other subdivisions with descriptive names or numbers, (3) a copy of all sales promotion material, and (4) a copy of the pre-construction sales contract.

Proposed law further requires information submitted on an application form prescribed by the board along with a \$250 application fee to cover the board's reasonable and ordinary expenses.

Proposed law provides for effective dates.

(Amends R.S. 8:70, 73, 75(A) and (B), 78, 201, 403, 456(A), 461(A)(introductory paragraph) and (2) and (B), 462, 466, 506(B), and 606(A); Adds R.S. 8:705.1)