

SUNSET REVIEW: EVALUATION OF THE STATE BOARD OF MORTICIANS AND FUNERAL DIRECTORS



DEPARTMENT OF LEGISLATIVE SERVICES DECEMBER 2016

Sunset Review: Evaluation of the State Board of Morticians and Funeral Directors

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

December 2016

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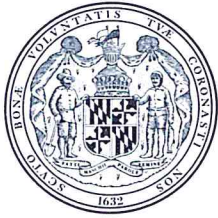
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Executive Director

December 1, 2016

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the State Board of Morticians and Funeral Directors as required by the Maryland Program Evaluation Act. This evaluation process is more commonly known as “sunset review” because the agencies subject to evaluation are usually subject to termination; typically, legislative action must be taken to reauthorize them. This report was prepared to assist the committees designated to review the board – the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee – in making their recommendations to the full General Assembly. The board is scheduled to terminate July 1, 2018.

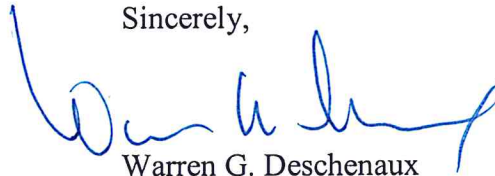
As part of this evaluation, DLS collected and analyzed data from a wide array of sources. This work included interviewing board members, board staff, and industry association representatives and conducting a survey of individuals regulated by the board. Survey feedback significantly informed the analysis, conclusions, and recommendations in this evaluation.

DLS finds that the board complies with its statutory mandate to regulate the funeral industry in the State. Board members are dedicated, productive, and professional, as well as aware of ongoing issues with board operations. The board functions well despite resource limitations and fulfills its licensing, inspection, complaint, disciplinary, and other regulatory duties. However, issues with the information technology department shared by most of the health occupations boards and commissions, and a negative perception of the board by some licensees, need improvement. Based on these findings, DLS recommends that the board’s termination date be extended for 10 years. Uncodified language should be adopted in the 2017 session to require that the board submit a follow-up report on specified issues to the committees by October 1, 2019.

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly
December 1, 2016
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We would like to acknowledge the cooperation and assistance provided by the board and the Department of Health and Mental Hygiene throughout the review process. The board was provided a draft copy of the report for factual review and comment prior to its publication; written comments from the board are included as an appendix to this report.

Sincerely,



Warren G. Deschenaux
Executive Director

WGD/JBC/kmc

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Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the State Board of Morticians and Funeral Directors, which is scheduled to terminate July 1, 2018. DLS finds that the board complies with its statutory mandate to regulate the funeral industry in the State. Board members and staff are dedicated, productive, and professional, as well as aware of ongoing issues with board operations. While opinions about the board within the industry are divergent, DLS was unable to find evidence of significant dysfunction within the board or the regulated industry. The board functions well despite its resource limitations and fulfills its licensing, inspection, complaint, disciplinary, and other regulatory duties. The board accomplishes this in large part due to the dedication of its staff, who frequently logs additional uncompensated hours to ensure that work is completed in a timely manner.

As part of this evaluation, DLS conducted numerous interviews; reviewed statutes, regulations, and legislative history; analyzed licensing, complaint, and fiscal data; attended one board meeting; and reviewed board meeting minutes. DLS also surveyed all licensees, permit holders, and registrants regulated by the board to provide context and perspective on the board and the funeral industry. Survey feedback is incorporated throughout the evaluation.

Since the 2007 sunset evaluation, several laws made substantive changes to the Maryland Morticians and Funeral Directors Act that have put Maryland at the forefront of industry oversight and regulation. Major

changes included the establishment of the Family Security Trust Fund to reimburse consumers for certain losses related to pre-need contracts, regulation of crematories, and establishment of procedures for handling and transporting human remains. This expansion of regulatory activity has caused some friction between the board and the funeral industry in the State.

The Handling Human Remains with Dignity Act, in part, prohibits transporting a body out of Maryland for preparation or storage unless the facility has entered into a written agreement with the board (or the Office of Cemetery Oversight) to allow the State to make unannounced inspections of the facility. This provision was raised in a May 10, 2012 Attorney General Letter, which noted this “severable portion may violate the Commerce Clause of the U.S. Constitution.”

Following initial implementation of the Act, the board conducted inspections of fewer than 10 facilities in neighboring states at the request of those facilities. No out-of-state inspection has been conducted since November 2012. However, respondents to the DLS survey commented that they believe the board is continuing to inspect out-of-state facilities and that such inspections are an example of the board overreaching its authority.

While DLS did not find evidence to suggest the board is still conducting such inspections, the statutory language in question remains. Given potential constitutional issues, concerns on the part of the industry, and the board’s indication that it

does not plan to use this authority, this provision should be repealed.

Recommendation 1: Statute should be amended to repeal the provision of law that authorizes a body of a decedent to be transported for preparation or storage to an out-of-state facility only under the condition that the facility has entered into a written agreement with the board or the Office of Cemetery Oversight to allow the State to make unannounced inspections of the facility.

The board employs four full-time staff to oversee licensing and inspection of 1,790 licenses, permits, and registrations. DLS found that the board's personnel resources have not kept pace with the expanded regulatory responsibilities placed on the board. The number of active licenses, permits, and registrations issued by the board has increased by approximately 54% over a four-year period. The board advises that the executive director, inspector, and licensing chief have worked a significant number of uncompensated overtime hours to complete assigned duties. Despite being understaffed, the board has managed to issue and renew licenses, permits, and registrations; conduct required scheduled inspections and pre-need audits; and complete complaint investigations in a timely manner.

DLS also notes that understaffing has led to a blurring of responsibilities for current staff, which has contributed to a perception by a segment of the industry of unfairness and biased implementation of board responsibilities. DLS does not find evidence of wrongdoing or mishandling of licensing, inspection, or complaint activities. However, DLS does find that the current staffing complement is overextended; thus, additional

staff is recommended to assist the board in fulfilling its responsibilities.

Recommendation 2: The board should work with the Department of Health and Mental Hygiene (DHMH) and the Department of Budget and Management to fill the vacant compliance officer position and seek an inspector/investigator position to assist with the board's expanded workload.

During the course of this evaluation, the board was responsive to requests for data. However, the board was unable to obtain data from its shared remote data server that matched monthly data collected by the board. The board is unable to use the full reporting functionality of the shared DHMH information technology (IT) database, which has led to duplicative records that do not match those being held in the shared database and in board files. DLS found no evidence that licenses are being issued improperly.

Additionally, the board does not have ready access to information, such as the total number of each license, registration, and permit held, but instead must request this data from shared IT personnel. Furthermore, control over the board website was taken over by the shared IT personnel and the website was reformatted. The current website is not user-friendly, several links do not work universally, and the board has a difficult time posting meeting minutes and other necessary information in a timely manner as a result of having to go through this shared personnel.

Recommendation 3: The board should work with DHMH's shared IT unit to better facilitate board recordkeeping and improve the functionality and timely updating of the board's website.

While the board's personnel resources have not kept pace with expanded regulatory responsibilities, the board does not appear to have biennial revenues sufficient to sustainably fund its vacant position. Furthermore, as the regulatory scope of the board has expanded, the board's workload has shifted. As the number of individuals and entities regulated has expanded, current board fees may no longer accurately reflect the board's workload for each group.

While DLS acknowledges that board fees are currently high relative to those in surrounding jurisdictions, fees have not been increased since 2009 and should reflect the reasonable cost of regulating the industry as required by Maryland law.

Recommendation 4: DHMH should assist the board in conducting a workload analysis to determine whether fees collected from specific regulated groups adequately reflect the costs associated with regulating that group. Based on the workload analysis, the board should also conduct an internal fiscal analysis and reassess its fee schedule. The board should submit a follow-up report to DLS by January 1, 2018, with the results of the analyses, including any proposed changes to the board's fee schedules. In that report, the board should specifically comment on the status of filling the vacant position and the impact of filling the position on the board's expenditures and fund balance.

While survey responses and board data indicate that the board handles inspections, investigations, and complaints fairly, a perception of unfairness, heavy-handedness, and overreaching authority persists among some licensees, which is a serious issue of

concern and should be addressed promptly by the board. Though DLS did not find evidence to indicate board impropriety, in order to maintain and improve the validity of the inspection and complaint process, the board should actively address several of the concerns raised in survey comments.

Recommendation 5: The board should take concrete steps to address the perception among some licensees that board actions are unfair, heavy-handed, or overreach board authority, including (1) clarifying board interpretation of mortuary transport service regulations; (2) documenting and communicating board complaint and investigation procedures to the regulated industry; (3) revising inspection forms and reports; and (4) continuing to communicate to the industry that current law and regulations do not allow grandfathering of establishments that are not compliant with statute and regulations.

While a majority of survey respondents (57%) indicated that they felt that the board kept licensees adequately informed, several indicated that they felt the board was not proactive enough in notifying licensees of board activities, interpretations, and clarifications. DLS notes that most health occupations boards only provide updates to their licensees via postings on their websites and that a policy of posting information to the website likely provides legally sufficient notice to licensees. DLS also notes that the board currently has a system in place where an individual volunteer board member distributes meeting minutes as well as other news and information about the board via email following board meetings.

Recommendation 6: Board staff should assume responsibility for the creation and distribution of meeting minutes and other board communications through one centralized email sent by board staff, in addition to posting information on the board’s website. Additional efforts should be made to collect or update email addresses for all licensees, permit holders, and registrants.

Throughout this evaluation process, DLS received a number of comments regarding the difficulty inherent in opening a new funeral establishment in Maryland. The most commonly identified barriers included education requirements, apprenticeship requirements, high license fees, difficulty entering the community of morticians and funeral directors, and the need to meet facility requirements.

Survey respondents noted that the apprenticeship requirement does not adequately prepare morticians or funeral directors to “hit the ground running” or to own or operate their own establishment. Concerns were raised about whether the current metrics of completion truly prepare apprentices to practice independently. **The board may wish to explore apprenticeship requirements in more detail to ascertain how well new licensees are prepared to practice.**

A number of respondents to the survey expressed concern with the high cost to maintain a license in the State, relative to surrounding states. **In conducting the recommended workload and fiscal analyses, the board may wish to take into consideration the cumulative impact of multiple fees on the industry.**

Based on the above findings, DLS makes the following recommendations regarding the continuation of the board:

Recommendation 7: Statute should be amended to extend the termination date for the State Board of Morticians and Funeral Directors until July 1, 2028. Thus, another direct full evaluation should be conducted in 2026. Further, uncodified language should be adopted to require that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1, 2019, on the board’s efforts to (1) ensure sufficient staff resources; (2) work with DHMH to facilitate board recordkeeping and improve the board’s website; (3) work to improve the negative perception of the board by some licensees; and (4) further enhance communications with the industry. The report should also outline actions taken based on the workload and fee analyses conducted earlier.

Additionally, as part of this sunset review, DLS sought information on funeral pricing across Maryland. DLS identified a 2015 study conducted by the Funeral Consumers Alliance of Maryland and Environs, which solicited the cost of basic direct burial (the minimum service required for burial) and basic direct cremation (the minimum service required for cremation) from funeral establishments in the State. Based on the 219 responses received, the average price of direct burial was \$2,486 and the average price of direct cremation was \$2,066. The lowest price for both services included in the report was \$650 (for both direct cremation and immediate burial in

Baltimore City). The highest price included was \$6,500 (for direct cremation in Montgomery County).

Based on data reviewed and additional research, several factors that influence the price of services were identified. These include overhead expenses incurred by each establishment, local competition for business, the relative affluence of the area served, and services offered by the establishment that are included in the price.

Chapter 1. State Board of Morticians and Funeral Directors

Recommendations:	<p>Extend the termination date of the State Board of Morticians and Funeral Directors by 10 years and require a follow-up report by October 1, 2019</p> <p>Repeal board's authority to inspect out-of-state establishments</p> <p>Direct board to fill its vacant position to assist with its expanded workload; work with the Department of Health and Mental Hygiene to facilitate board recordkeeping and improve the board's website; conduct a workload analysis and reassess fees (and report on this effort to the Department of Legislative Services); work to improve perception of board by some licensees; and further enhance communications with the industry</p>
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Date Established: 1902

Most Recent Prior Evaluation: Full evaluation, 2007

Primary recommendation: extend termination date by 10 years to July 1, 2018 (enacted by Chapter 583 of 2008)

Composition: 11 members (6 practitioners; 5 consumers)

Staff: One executive director, one licensing chief, one board inspector/investigator, and one office support staff (all full-time); one additional compliance officer position is vacant

Other shared personnel support the board (assistant Attorney General, network support, and information technology personnel)

Regulated Professions: Morticians (917), Funeral Establishments (287), Transporters (182), Crematory Operators (146), Courtesy Card Holders (63), Corporations (57), Mortuary Transport Services (42), Apprentices (42), Crematories (35), Surviving Spouses (10), Funeral Directors (9), and Executors (0) in fiscal 2016

Authorizing Statute: Title 7, Health Occupations Article

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination.

The State Board of Morticians and Funeral Directors last underwent full evaluation as part of sunset review in 2007. At that time, the Department of Legislative Services (DLS) primarily found that the board was efficient and effective in its licensing, complaint, inspection, and disciplinary functions. DLS noted that the board conducted itself in a productive, professional manner and had been successful at protecting consumer interests. DLS recommended that the board’s termination date be extended for 10 years. Chapter 538 of 2008 extended the termination date of the board to July 1, 2018.

This full evaluation was undertaken to provide the General Assembly with information to use in making the determination about whether to reauthorize the board and for what period of time. This report addresses the board’s ability to carry out its core functions, the fiscal status of the board, license fees charged by the board relative to neighboring states, and the general perception of the board by the regulated industry. The report also includes an examination of variations in the price of basic funeral services across the State and barriers to opening new funeral establishments.

Research Activities

To complete this evaluation, DLS staff collected and analyzed data from a wide array of sources. This work included:

- reviewing statutes and regulations governing morticians, crematories, mortuary transport services, and other related professions in Maryland and in other states;
- reviewing the legislative history of the board and proposed legislation relating to the board;
- interviewing current board members and staff;
- interviewing representatives of trade associations and consumer protection organizations;
- conducting a survey of all licensees, permit holders, and registrants regulated by the board;
- attending one board meeting and several subcommittee meetings, as well as reviewing minutes of past board meetings;
- analyzing the licensing, complaint, and financial data of the board; and

- reviewing pricing data compiled by consumer protection organizations.

Throughout the evaluation process, board members, the board's administrative staff, and staff at the Department of Health and Mental Hygiene and the Office of the Attorney General were helpful and responsive to DLS requests for information.

As noted in the research activities above, to inform this evaluation, DLS surveyed all types of licensees, permit holders, and registrants regulated by the board. The purpose of the survey was to provide critical context and perspective on the board and the funeral industry in the State. Survey feedback is incorporated throughout this evaluation and addressed specifically in Chapter 4. A summary of the results of the full survey can be found in **Appendix 1**.

Report Objective and Structure

The objective of this report is to provide an overview of the functions and conduct of the State Board of Morticians and Funeral Directors and to offer recommendations to improve the way the board functions. This report consists of six chapters. Chapter 1 offers an overview of the sunset process, provides background information on the board, and summarizes major legislative and regulatory changes since the last sunset evaluation. Chapter 2 reviews the board's core functions, including licensing and enforcement. Chapter 3 presents board finances and administrative issues. Chapter 4 discusses the survey results and the perception of the board by some licensees. Chapter 5 presents DLS's conclusion and primary recommendation. Chapter 6 provides information collected during the analysis of the board, including the price of basic services provided by funeral establishments and crematories across the State and barriers to entering the funeral industry.

As supplements to the report, four appendices are included. Appendix 1 contains a summary of the results from the DLS survey of individuals regulated by the industry. **Appendix 2** includes several examples of fees charged in neighboring states. **Appendix 3** includes draft legislation to implement some of the recommendations contained in this report. The board reviewed a draft of this report and provided the written comments included as **Appendix 4**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in those comments may not reflect this published version of the report.

Board Mission, Functions, and Structure

The State Board of Morticians and Funeral Directors was established as the State Board of Undertakers of Maryland in 1902 (Chapter 160, Acts of 1902). The primary purpose of the board is the protection of the public's health and welfare through proper credentialing; examination; licensure; and discipline of morticians, funeral directors, corporations, crematory operators, apprentices, surviving spouses, mortuary transport services, transporters, courtesy card holders,

and holders of an executor license in Maryland. The board also licenses, permits, and inspects funeral establishments and specified crematories for compliance with all applicable federal, State, and local laws, and takes disciplinary action against such establishments where warranted. Additionally, the board audits pre-need contracts.

The board comprises 11 members, of whom 6 are licensed morticians or funeral directors and 5 are consumer members. The president of the board, a licensed mortician, only votes in the event of a tie. Members are appointed by the Governor, with the advice and consent of the Senate, to staggered four-year terms and may not serve more than two consecutive terms. At the end of a term, a member continues to serve until a successor is appointed and qualifies.

Major Legislative Changes Since the 2007 Sunset Evaluation

Since the 2007 sunset evaluation, several laws made substantive changes to the Maryland Morticians and Funeral Directors Act that have put Maryland at the forefront of industry oversight and regulation. Recent legislative changes are summarized in **Exhibit 1.1**. Major changes included the establishment of the Family Security Trust Fund to reimburse consumers for certain losses related to pre-need contracts, the regulation of crematories, and the establishment of procedures for handling and transporting human remains. The board was also granted the authority to conduct unannounced inspections of funeral establishment preparation rooms and body storage areas in response to specified information, or if the funeral establishment is on probation, and to strengthen regulation of pre-need contracts.

Many of these issues are discussed in more detail throughout this report. The expansion of licensing duties and the investigation of complaints (including those complaints related to issues addressed in recent legislation) are discussed in Chapter 2. Fees are discussed in Chapter 3. Issues related to the general expansion of regulation of the industry, as they relate to perceptions of the board, as well as the net impact of regulation on the opening of new funeral establishments, are discussed in Chapter 4.

Exhibit 1.1
Major Legislative Changes Since the 2007 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2008	532	Creates the Family Security Trust Fund within the board to reimburse consumers for qualifying losses related to pre-need contracts and authorizes an annual assessment from licensees to capitalize the fund.
		Develops a process for reviewing and handling notification of claims, conducting hearings, and making any payments from the trust fund.
	583	Extends the termination date of the board and evaluation date of the board to July 1, 2018, and July 1, 2017, respectively, and alters the composition of the board.
2010	450	Requires the Office of Cemetery Oversight and the board to establish a process and adopt substantially equivalent regulations for regulating crematories that provide for registration, permitting, and licensure based on the crematory's ownership.
2012	483/484	Require the board to build the Family Security Trust Fund to a balance of \$1 million, maintain the trust fund at that level, and exempt the fund from a requirement that specified interest accrue to the general fund until the balance reaches \$1 million.
	500/501	Establish requirements for the proper handling of the body of a decedent by funeral establishments and crematories and establish that failure to comply is grounds for disciplinary action for licensees of the board.
	614/615	Require a "mortuary transport service" to hold a permit issued by the board, require individuals employed by a permit holder to be registered with the board as a "transporter" before they may remove and transport human remains in Maryland, and require the board to adopt implementing regulations and establish guidelines for removing and transporting human remains.
2013	242/243	Alter the authority of the board to deny a license to an applicant for a funeral establishment license, reprimand the holder of a funeral establishment license, place the holder of a funeral establishment license on probation, or suspend or revoke a funeral establishment license under certain circumstances.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
	404	<p>Authorizes each health occupations board to develop a secure electronic system for the distribution of a renewed license, permit, certification, or registration.</p> <p>Requires that any such system developed (1) be accessible to the public for the purpose of verification of a current license, permit, certification, or registration and (2) provide the licensee, permit holder, certificate holder, or registrant the option of printing a verification of the status of their license, permit, certificate, or registration.</p>
2014	308	<p>Authorizes unannounced inspections by the board of the preparation or body storage areas of licensed funeral establishments in response to specified information or when an establishment has been placed on probation.</p> <p>Specifies that a general unannounced inspection of a funeral establishment may include advance notice that an inspector may be in the region of the funeral establishment for the purpose of conducting an inspection.</p> <p>Authorizes a trained staff member of the board to call the supervising mortician of a licensed funeral establishment and request, and be granted, immediate access to the preparation and body storage areas of the funeral establishment.</p>
	322	<p>Establishes procedures to be followed by funeral establishments owned by a single owner and sole licensee in the event of the owner's death.</p> <p>Establishes a pre-need trustee license to ensure management of pre-need accounts held by a funeral establishment until its closing or sale and alters qualifications, term, and application procedures for an executor license.</p>
	497	Requires specified disclosure statements in pre-need contracts and specifies that a pre-need escrow or trust account may not be deemed an asset of the individual licensee or the licensed funeral establishment.
2015	167	Requires specified applicants to the board to submit to a specified criminal history records check (CHRC) or submit to the board a CHRC conducted by an accredited agency approved by the board.
	433	Requires the board to provide notice by electronic or regular mail of a member vacancy to specified persons.
	452	Authorizes the board to issue a public cease and desist order or impose a civil fine of no more than \$5,000 per offense for specified violations.

Maryland's Regulation of Funeral Industry Is Ahead of Other States

In April 2009, *The Washington Post* ran a series of articles detailing grossly improper handling and storage of bodies, many of whom were veterans awaiting burial at Arlington National Cemetery, by National Funeral Home in Falls Church, Virginia. The funeral establishment serves as a regional clearinghouse that embalms and stores bodies for other funeral homes, which at the time included at least one Maryland funeral home. The Handling Human Remains with Dignity Act of 2012 (Chapters 500 and 501 of 2012) was, at least in part, prompted by that series and demonstrates how Maryland's regulation of the industry has been on the forefront among states.

An August 2016 *New York Times* article, "*Transporting the Dead: A Booming but Lightly Regulated Industry*," discussed how mortuary transport services are growing in numbers as funeral homes seek to reduce costs. However, the article notes that transport services are lightly regulated nationally, leaving both transporters and consumers vulnerable to disease, leaving transport companies open to lawsuits by their own employees related to safe working conditions, and raising concerns related to the dignity of the deceased. Conversely, Maryland began regulation of mortuary transport services and transporters, including establishing guidelines for the removal and transportation of human remains four years earlier, per Chapters 614 and 615 of 2012.

Authority to Inspect Out-of-state Establishments Should Be Repealed

As part of the Handling Human Remains with Dignity Act, § 5-513(g) of the Health-General Article prohibits transporting a body out of Maryland for preparation or storage, to a facility that is not licensed by the board or permitted by the Office of Cemetery Oversight unless, among other things, the facility has entered into a written agreement with the board or the Office of Cemetery Oversight to allow the State to make unannounced inspections of the facility. The effect of this provision is to authorize the board to conduct inspections of out-of-state facilities and to prohibit an out-of-state funeral establishment from receiving a body unless the establishment allows the board or office to make unannounced inspections. This provision was raised in a May 10, 2012 Attorney General letter, which noted this "severable portion may violate the Commerce Clause of the U.S. Constitution."

According to the board, following initial implementation of the Act, the board conducted fewer than 10 inspections of facilities in neighboring states at the request of those facilities. The last out-of-state inspection occurred in November 2012. Respondents to the DLS survey commented that they believe that the board is continuing to inspect out-of-state facilities and that such inspections are an example of the board overreaching its authority. The board indicates that it no longer inspects out-of-state facilities and that it will not do so as a result of pushback from the industry.

While DLS did not find evidence to suggest that the board is still conducting such inspections, the statutory language in question remains. Given potential constitutional issues,

concerns on the part of the industry, and the board's indication that it does not plan to use this authority, this provision should be removed from statute.

Recommendation 1: Statute should be amended to repeal the provision of law that authorizes a body of a decedent to be transported for preparation or storage to an out-of-state facility only under the condition that the facility has entered into a written agreement with the board or the Office of Cemetery Oversight to allow the State to make unannounced inspections of the facility.

Major Regulatory Changes Since the 2007 Sunset Evaluation

In addition to legislative changes since the 2007 sunset evaluation, several changes have been made to the regulations governing the board and the industry. These changes are summarized in **Exhibit 1.2**.

Exhibit 1.2 Major Regulatory Changes Since the 2007 Sunset Evaluation

<u>Year</u>	<u>COMAR Citation</u>	<u>Major Change</u>
2008	10.29.09	Allows individuals licensed in other states that meet the requirements for Maryland licensure to be granted a waiver from the examination and apprenticeship licensure requirements.
	10.29.01-.13	Change the board name to its current name, establish requirements to obtain a funeral director license, and establish the initial license fee for funeral directors.
2009	10.29.04	Increases various fees related to licensure (initial, renewal, reinstatement, late, inactive status, and inactive status renewal); establishes fees for establishment name change and noncompliance inspection; and eliminates certain fees for continuing education program application.
	10.29.03, .05, and .09	Set signage standards for funeral homes, require medical waste to be picked up by a licensed waste disposer, require funeral establishments to be inspected on a biennial basis, require the board to randomly audit continuing education units (CEUs), and require licensees to earn a certain amount of CEUs per renewal cycle on an approved course on the pre-need law.

<u>Year</u>	<u>COMAR Citation</u>	<u>Major Change</u>
2010	10.29.15	Allows for automatic approval of CEUs approved by or sponsored by certain entities; allows for licensed funeral establishments and other State licensees to apply to the board for CEU approval; and allows three carry-over credits to be granted per renewal cycle for morticians, funeral directors, and surviving spouses who renew during a certain time.
2012	10.29.09	Requires that applicants for an apprenticeship complete academic credits in embalming theory, the embalming practical experience, and in a federal Occupational Safety and Health Administration (better known as OSHA) course. Requires that documentation of embalming assists submitted to the board by an apprentice include corresponding copies of the filed death certificates and that documentation of funeral assists include a corresponding published notice of the service.
2014	10.29.03.04	Requires a funeral establishment with a holding room where embalming does not take place to have an exhaust system whereby gases are drawn to outside air.
	10.29.21	Requires mortuary transport companies to register and receive a permit in order to remove and transport human remains, requires vehicles to meet certain standards, and prohibits certain acts.
	10.29.16-.20	Require certain crematories to obtain a permit from the board prior to operation, to establish fees, to allow for certain inspections, and to specify procedures for cremation.
	10.29.17.02C	Authorizes a crematory to cremate the human remains of one decedent prior to obtaining a permit as part of a manufacturer's training course on the cremation machinery and only if those with right to final disposition are notified and given permission.
2015	10.29.11	Requires the board to follow certain procedures in response to complaints received (effective July 2016).

Source: Code of Maryland Regulations; *Maryland Register*

As with the legislative changes, regulatory changes increased oversight of the industry in an effort to protect consumers and the public health. Regulations focused on continuing education requirements, fee schedules, workplace safety standards, implementation of the regulation of crematories and mortuary transport companies, and the creation of certain complaint procedures.

Mortuary Transport Service Regulations Proved Problematic

In 2014, the board promulgated regulations to implement Chapters 614 and 615 of 2012, which govern mortuary transport service permits and registration of transporters. Implementation of the regulations has been a source of significant confusion and disagreement between the board and the industry. As discussed in more detail in Chapter 4, respondents to the DLS survey cited vehicle standards, prohibited acts, and the registration of transporters as examples of the board overreaching its authority. In researching this issue, DLS found that conflicting advice from various sources was given to licensees, registrants, and permit holders about the status of the regulations, including whether mortuary transport companies are required to register with the State and whether the display of a certain board-issued sticker is required. While it appears that the board has issued its own guidance on the status of the regulations and remained consistent in such guidance, confusion and opposition within the funeral industry persists.

Chapter 2. Core Functions of the Board

The State Board of Morticians and Funeral Directors is mandated to carry out two distinct functions: (1) licensing and enforcing statutory requirements related to mortuary science; and (2) protecting health and public welfare. To fulfill these functions, the board licenses, permits, and registers regulated individuals and facilities, conducts inspections, investigates complaints and issues raised during inspections, and takes disciplinary action where warranted. This chapter explores these core board functions.

Board Issues 12 Industry Credentials

The board issues and oversees 12 types of licenses, permits, and registrations as shown in **Exhibit 2.1**. The number of licenses, permits, and registrations increased by 627 between fiscal 2012 and 2016, a 54% increase in regulatory activity.

Exhibit 2.1
Total Actively Held Licenses, Permits, and Registrations under the
State Board of Morticians and Funeral Directors
Fiscal 2012-2016

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Apprentice Licenses	28	23	25	30	42
Mortician Licenses	769	871	854	900	917
Funeral Director Licenses	7	9	8	13	9
Surviving Spouse Licenses	10	13	10	11	10
Executor Licenses	0	1	2	0	0
Courtesy Cards	47	77	54	93	63
Establishment Licenses	245	286	270	304	287
Corporation Licenses	57	57	57	57	57
Crematory Registrations	0	0	0	35	35
Crematory Operator Permits	0	0	0	139	146
Mortuary Transport Company Permits	0	0	0	32	42
Transporter Registrations	0	0	0	141	182
Total	1,163	1,337	1,280	1,755	1,790

Note: Data reflects total number of credentials regulated by the board in that fiscal year. The board began issuing credentials associated with regulation of crematories, crematory operators, mortuary transport services, and transporters in fiscal 2015.

Source: State Board of Morticians and Funeral Directors; Department of Health and Mental Hygiene; Department of Legislative Services

The most comprehensive license issued is to morticians; it authorizes licensees to arrange for the final disposition of a dead human body, to prepare a dead human body for disposition – including disinfecting or preserving a body, and to own a licensed funeral establishment. In fiscal 2016, there were 917 mortician license holders, which is the largest license group regulated by the board. A funeral director license authorizes the licensee to practice all aspects of mortuary science, except preserving a body (which includes embalming), and to own a funeral establishment. This license was reopened recently, and only a limited number of individuals have obtained the license. Generally, a funeral establishment may only be owned and operated by a licensed mortician, funeral director, or surviving spouse; however, 57 corporation licenses have long been held in Maryland. This license allows a corporation to own and operate a funeral establishment as long as all services are provided by licensed individuals. There were 287 funeral establishments in Maryland in fiscal 2016.

In 2012, Chapters 500 and 501 required the board and the Office of Cemetery Oversight (OCO), in the Department of Labor, Licensing, and Regulation, to jointly regulate crematories and crematory operators in the State. A crematory is regulated either by the office or the board based on the crematory's ownership. OCO and the board regulate facilities in which their registrant or permit holders or licensees hold the majority of ownership. Independent or free-standing crematories are subject to the jurisdiction of OCO. As of November 2016, additional crematories have come under the board's purview so that it now regulates 37 of the 39 known crematories in the State (2 more than reflected in Exhibit 2.1). The office regulates the remainder. In fiscal 2016, there were also 146 permitted crematory operators.

Data Discrepancies in Board Regulatory Activity

In fiscal 2016, the board regulated a total of 1,790 active credentials (some individuals hold more than one credential). The Department of Legislative Services (DLS) obtained this data from the information technology (IT) personnel that the board shares with other health occupations boards. DLS also obtained information kept by board staff that tracks renewals, applications, and reinstatements of licenses, permits, and registrations on a monthly basis. DLS found no evidence that licenses are being issued improperly. However, the monthly tracking data kept by board staff conflicted with the "total active" data obtained from the IT unit. DLS was unable to reconcile numerous differences. The board submits data to the IT unit. As such, DLS anticipated that the data retrieved from the IT database would mirror board records. Since it does not, DLS was unable to determine where the differences originate and which set of data is more accurate. The board did note that personnel changes in fiscal 2012 left the board with incomplete data for that year and for years prior, but this does not explain the more recent discrepancies. For purposes of this evaluation, the total active data has generally been used rather than the monthly tracking data. **The board should work with the shared IT staff for the health occupations boards to reconcile data discrepancies.** A more detailed discussion of the issues presented by the shared IT support and a DLS recommendation regarding the reconciliation of board and the Department of Health and Mental Hygiene (DHMH) data are included later in this chapter in Recommendation 3.

Board Has Taken Steps to More Evenly Distribute Its Workflow

Credentials are generally issued on a biennial basis – with the exception of apprentice licenses, which are valid for one year after issuance; executor licenses, valid for six months after issuance; and registered mortuary transporters, which are one-time-only (unless the transporter switches to another transport service). Prior to fiscal 2013, mortician licenses, the largest group of individuals regulated by the board, were renewed in even-numbered calendar years. However, beginning in fiscal 2013, roughly half of mortician licenses are renewed in even-numbered years and half are renewed in odd-numbered years. Generally, other permits, licenses, and registrations are renewed in odd-numbered fiscal years.

Board Has Made Strides in Facilitating Initial Licensing and Renewal

The board issues licenses, permits, and registrations in a timely manner and has expanded efforts to make the licensing process accessible and to ease renewal procedures, including inspections, when required. The board notes that staff works with individuals who submitted incomplete applications to obtain necessary documentation and information rather than invalidating the entire application and requiring resubmittal of the application. The board also engages in significant public outreach and education to make both the application and renewal process easier and less expensive for the individuals and businesses it regulates. Some of these efforts were a result of recommendations from the 2007 sunset evaluation, and some were due to board initiative and the addition of new credential types.

Few Individuals Have Sought Funeral Director License

A funeral director license authorizes the licensee to practice all aspects of mortuary science, except preservation of a body, and to own a funeral establishment. Historically, the board issued funeral director licenses. However, in May 1973, the board ceased issuing new funeral director licenses. Those individuals who held a funeral director license and were practicing prior to May 1973 have been able to continue renewing their licenses. Chapter 186 of 2007 reopened the funeral director license. Individuals seeking licensure as a funeral director must meet all requirements of a licensed mortician with the exception of demonstrating competency in preserving a body. This allows individuals to work and earn an income while obtaining experience in preserving a body if they so choose, or to simply maintain a funeral director license without the requirement to preserve a body, which includes embalming. Although the license reopened in 2007, no local colleges offered a program exclusively for funeral directors. The board has worked with the Community College of Baltimore County, Catonsville Campus, Mortuary Science Program to offer this course. Even so, DLS notes that there has been very little participation in that program, and the board reports that, as of July 2016, only five individuals had applied for this license since its reintroduction.

Board Frequently Provides Free Courses to Educate Industry

The board conducts free continuing education courses on a regular basis. In particular, the board conducts regular courses on pre-need, crematory regulations, the mortuary transport regulations, and the Human Dignity Act. The board also engages in public outreach and education

related to new regulations and legislation as necessary. The board spent a significant amount of time offering outreach and training for the newly registered and permitted crematories, crematory operators, mortuary transporters, and mortuary transport service companies both before and after the enacting legislation took effect.

License Reciprocity for Morticians Available with Most Surrounding States

Maryland has entered into reciprocity agreements, for morticians only, with several neighboring states. Generally, these agreements (covering licensees in the District of Columbia, Delaware, Pennsylvania, and Virginia) specify that so long as the licensing requirements in the other jurisdiction remain at least as stringent as those in Maryland, licensees will be granted license reciprocity with the payment of the Maryland licensing fee. To date, no such reciprocity agreements exist for funeral directors, crematory operators, or mortuary transport service companies.

A small number of survey respondents expressed concern that increased regulation in Maryland could endanger their reciprocal licenses, either in Maryland if they were originally licensed outside of the State, or in one of the neighboring states if originally licensed in Maryland. While there has been some expansion of the *areas* that the Maryland board regulates, as well as changes to the requirements for certain facilities, there have not been significant changes to licensure requirements that would likely impact reciprocity agreements with surrounding states.

Board Inspects Funeral Establishments, Crematories, and Mortuary Transport Service Vehicles and Audits Pre-need Contracts

The board is required to inspect funeral establishments and crematories on a biennial basis and upon change or sale of ownership of an establishment or crematory. Additionally, as a condition of licensure and permitting, funeral establishments and crematories must be in compliance with all applicable federal, State, and local laws. The board conducts opening inspections of both funeral establishments and crematories to ensure compliance. Although not required under statute or regulation, the board also conducts closing inspections for funeral establishments and crematories; this is now done as a “best practice” in response to several complaints of leftover remains and cremains. Conducting the closing inspections ensures protection of the public health and safety.

Mortuary transport service companies must provide evidence that all removal vehicles have passed board inspection prior to permitting, and all mortuary transport service vehicles must be inspected on a biennial basis. Since implementation of the mortuary transport service company regulations began, the board has held inspection days where mortuary transporters can bring vehicles to a geographically convenient location for vehicle inspections. This service was mentioned by several individuals in interviews as well as in the survey conducted by DLS as a valuable board service.

Only a licensed mortician, licensed funeral director, or holder of a surviving spouse license (in conjunction with their supervising mortician or funeral director) may make prearrangements and execute pre-need contracts with buyers. There are specific regulations and statutes regarding the required content and format of these pre-need contracts. The board is authorized to conduct audits of licensees that receive pre-need funds, place pre-need funds into a trust, or enter into a pre-need contract. Generally, board policy is to audit all pre-need contracts at least once biennially, which the board generally does during the biennial inspections for the funeral establishments where pre-need contracts are executed. The board began conducting audits more frequently when the board dropped the requirement for a certified public accountant (CPA) audit report for pre-need contracts in 2008. The board notes that licensees were paying \$1,000 to \$5,000 for a CPA audit: the board charges no audit fees.

Board Receives, on Average, about 120 Complaints Annually

As shown in **Exhibit 2.2**, in fiscal 2012 through 2016, the board received an average of 120 complaints annually. Compared to approximately 45,600 deaths recorded in Maryland each year, the annual complaint total is relatively low. The number of complaints temporarily spiked in fiscal 2013 and then significantly increased in fiscal 2016. The board advises that scheduled biennial inspections led to many of these complaints, particularly with relatively new regulations on pre-need contracts and authority over crematories and mortuary transport services. The spike in complaints in fiscal 2016 also resulted in a higher-than-average number of complaints being carried over to fiscal 2017, as many complaints were initiated later in the fiscal year. In general, however, relatively few complaints are carried over.

The board fields complaints from consumers, courts, employers, and other licensees regarding the operation of funeral establishments and the behavior of their employees. There are two types of complaints: signed formal complaints received via the website or in writing and board information complaints submitted based on information received by a board member. The board advises that, in 2016, 48% of complaints were opened in response to a formal written complaint from consumers; 28% resulted from findings during the inspections or audits; and 24% were opened based on telephones or other outside information provided to board members. DLS found that the board produced concise records of all complaint matters and has an organized system of filing inspection forms. The board's website had all required public orders published. Board staff also notes when a suspension has been lifted online so that a consumer may be made aware that an establishment or crematory is no longer under suspension.

Exhibit 2.2
Complaints Received and Complaint Dispositions
Fiscal 2012-2016

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Complaints Received	82	153	90	99	168
Pending from Prior Year	0	5	2	10	9
Total Complaints	82	158	92	109	177
Grounds for Complaints					
Unprofessional Conduct	40	39	32	35	43
Unlicensed Practice	15	35	19	21	40
Pre-need Issues	4	10	16	10	56
Inspection Issues	1	6	2	1	8
Holding Remains for Ransom	3	4	3	2	3
Lack of Authorization for Removal, Embalming, or Cremation	5	0	0	0	1
Other	14	59	18	30	18
Disposition of Complaints					
Closed with No Action	57	74	54	43	50
Letter of Education	14	53	9	35	65
Letter of Admonishment	0	5	1	6	10
Public Order	6	19	16	6	12
Carried Over to Next Fiscal Year	5	2	10	9	40
Total Dispositions	82	153	90	99	177

Notes: In all fiscal years, total complaints include complaints that were carried over from the prior year, while the grounds for complaints and disposition of complaints generally do not reflect complaints carried over from the prior year. However, in fiscal 2016, two complaints received were merged, but their related grounds were listed separately; also, the total dispositions for that year reflect complaints carried over from fiscal 2015.

Source: Department of Health and Mental Hygiene; Department of Legislative Services

Board Lacks Sufficient Personnel Resources

The board employs four full-time staff: one executive director, one licensing chief, one health occupations inspector/investigator, and one office secretary to oversee licensing and

inspection of 1,790 licenses, permits, and registrations. The board also shares an assistant Attorney General, a fiscal officer, and IT staff with the other health occupations boards within DHMH. Two board positions, an additional combined inspector/investigator and a compliance officer, have been vacant for more than a year. As discussed in more detail in Chapter 3, the board's special fund balance has been insufficient to fund these positions. Consequently, the Governor's fiscal 2017 budget abolished the vacant inspector/investigator position. The vacant compliance officer position remains, with funding included in the budget for this position; however, the board's finances cannot currently support the position for more than a couple of years.

DLS found that the board's personnel resources have not kept pace with the expanded regulatory responsibilities placed on the board. The number of active licenses, permits, and registrations issued by the board has increased by 627 since fiscal 2012, an expansion of approximately 54% over a four-year period. The growth reflects both expansion within the funeral industry as well as the additional regulatory authority over crematories, crematory operators, mortuary transport services, and transporters. As a result of an increasing workload with diminished personnel resources, board staff has had to work significant additional overtime hours to keep pace with licensing duties, required inspections, educational outreach, and requests for information. The board advises that the executive director and licensing chief have each worked more than 250 additional hours in the past year to complete assigned duties. The board inspector has also worked almost 150 additional hours in the past year. DLS notes that these staff are salaried and although they accrue compensatory time to compensate for working additional hours, they often cannot use this earned time off due to workload and are losing earned compensatory hours annually. Despite being understaffed, the board has managed to issue and renew licenses, permits, and registrations in a timely manner; conduct required scheduled inspections and pre-need audits; and complete complaint investigations in a timely manner. However, without significant staff dedication and use of overtime, these goals would not be met.

DLS also notes that understaffing has led to a blurring of responsibilities for current staff. The executive director has had to assist with opening and closing inspections because the sole board inspector cannot complete required biennial inspections of funeral establishments and crematories and vehicle inspections for registered mortuary transport services on the statutory schedule. This blurring of roles has contributed to a perception by a segment of the industry of unfairness and biased implementation of board responsibilities, as discussed more fully in Chapter 4. Industry members feel that the executive director's participation in the licensing process, the complaint process, and also the inspection process is inappropriate and unfair. DLS does not find evidence of wrongdoing or mishandling of licensing, inspection, or complaint activities. However, DLS does find that the current staffing complement is overextended; thus, additional staff is recommended to assist the board in fulfilling its responsibilities while helping eliminate the need for significant overtime as well as the blurring of responsibilities between board staff that concerns the industry.

Recommendation 2: The board should work with DHMH and the Department of Budget and Management to fill the vacant compliance officer position and seek an inspector/investigator position to assist with the board's expanded workload.

Shared Information Technology Support Presents Problems for Board

During the course of this evaluation, the board was responsive to requests for data. However, as mentioned earlier, the board was unable to obtain data that matched monthly data collected by the board from its shared remote data server. The board shares IT support with other health occupations boards, and a significant amount of board data is stored on a remote server. The board is unable to use the full reporting functionality of the shared DHMH IT database, which has led to duplicative records that do not match those being held in the shared database and in board files. Since the data cannot be reconciled, it is unclear whether either set of data is complete and accurate.

Additionally, the board does not have ready access to information, such as the total number of each license, registration, and permit held, but instead must request this data from shared IT personnel. Furthermore, control over the board website was taken over by the shared IT personnel and reformatted with a strict, standardized website that is more difficult to read and find necessary information and forms. The current website is not user-friendly, several links do not work universally, and the board has a difficult time posting meeting minutes and other necessary information in a timely manner as a result of having to go through this shared personnel.

The board needs access to current and accurate data on the number and types of licensees, permit holders, and registrants. This should include the number of initial, renewal, and total licenses, permits, and registrations for each credential issued by the board. The board also needs the ability to promptly upload documents and information to its website and ensure that the industry and consumers have access to timely, useful information.

Recommendation 3: The board should work with DHMH's shared IT unit to better facilitate board recordkeeping and improve the functionality and timely updating of the board's website.

Chapter 3. Fiscal Status of the State Board of Morticians and Funeral Directors

The State Board of Morticians and Funeral Directors is self-supporting through special fund fee revenues collected from those regulated by the board. This chapter presents the fiscal status of the board and compares major licensing fees to those charged by neighboring states. The Department of Legislative Services (DLS) finds that the board has historically managed its finances well; however, expansion of the board's regulatory authority in recent years and the need to fill a vacant position necessitate reexamination of board fees.

As shown in **Exhibit 3.1**, board revenues have ranged from \$347,915 to an estimated \$859,333, with expenditures of between \$543,992 and an estimated \$724,507. The board's fund balance has fluctuated significantly and was reduced to nearly \$0 at the end of fiscal 2016.

Exhibit 3.1 Special Fund History of the State Board of Morticians and Funeral Home Directors Fiscal 2013-2017

	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>Estimated FY 2017</u>
Beginning Fund Balance	\$249,700	\$349,453	\$115,200	\$211,211	\$1
Total Revenues	\$643,745	\$347,915	\$727,158¹	\$386,864	\$859,333
Attorney General Costs	\$113,501	\$102,640	\$118,259	\$118,038	\$107,795
Indirect Costs	17,874	14,611	15,588	17,613	16,544
Rent Costs	28,582	71,109	68,591	66,506	64,071
Direct Costs	384,035	393,808	428,709	395,917	536,097 ²
Total Expenditures	\$543,992	\$582,168	\$631,147	\$598,074	\$724,507
Annual Surplus/Deficit	\$99,753	-\$234,253	\$96,011	-\$211,210	\$134,826
Biennial Surplus/Deficit		-134,500		-115,199	
Ending Fund Balance	\$349,453	\$115,200	\$211,211	\$1	\$134,827
% of Total Expenditures	64%	20%	33%	0%	19%

¹ Fiscal 2015 reflects first-time fees from crematory operators, crematories, mortuary transport services, and registered transporters.

² The fiscal 2017 appropriation includes funding of approximately \$130,000 for two additional board positions, the authority for one of which was cut from the budget, and one of which remains vacant.

Source: Department of Health and Mental Hygiene; Department of Legislative Services

Personnel Expenses Drive Board Expenditures

Personnel expenses, including the shared cost of an assistant Attorney General, continue to comprise the largest portion of the board's budget, accounting for more than 80% of overall expenses in fiscal 2017. The board's indirect costs consist of expenses pooled with other health occupations boards housed within the Department of Health and Mental Hygiene (DHMH), including information technology support, fiscal personnel, and regulatory personnel. The remainder of the board's expenditures comprise rent and other operating costs.

Revenues Higher in Odd-numbered Fiscal Years

The board collects significantly higher revenues in odd-numbered fiscal years when the majority of renewals occur. Prior to fiscal 2013, most individuals regulated by the board renewed in even-numbered fiscal years. This left the board with unstable revenues and a higher licensing workload in even-numbered years. Thus, in fiscal 2013, the board split morticians (the largest licensee group) so that roughly half renew in even-numbered fiscal years and half renew in odd-numbered fiscal years. The board began regulating crematories, crematory operators, mortuary transport service companies, and registered transporters in fiscal 2015; the significant increase in revenues that year, in large part, reflects the new regulatory activity. These individuals and entities also renew biennially. Accordingly, the board now takes in most revenues in odd-numbered fiscal years, resulting in an annual surplus, and lower revenues in even-numbered fiscal years, resulting in an annual deficit. Even so, the board has been able to cover expenses in all recent biennial cycles using the available fund balance.

Special Fund Balance Depleted Due to Biennial Deficit

Through fiscal 2015, the board managed to maintain a healthy fund balance (recommended to be between 20% and 30% of annual total board expenditures). However, as the board runs a biennial deficit, the board's overall revenues have not kept pace with expenditures. Thus, the board closed fiscal 2016 with no fund balance.

The board's estimated fiscal 2017 ending fund balance is \$134,827 (19% of expenditures). However, this estimate is based on the fiscal 2017 appropriation, which includes approximately \$130,000 to fill two positions including benefits, overhead, *etc.* (an inspector/investigator position that was cut from the budget and a compliance officer position that is currently vacant). The board's fiscal officer advises that the fund balance is insufficient to fill and sustain the vacant compliance officer position and, as such, the board's actual fiscal 2017 expenditures are estimated to be \$594,507, leaving the board with a fiscal 2017 ending fund balance of \$264,827 (45% of expenditures), which is needed to cover projected expenditures in fiscal 2018.

Assuming the board retains the authority for the additional compliance officer position, the board does not have sufficient funds (ongoing revenues combined with fund balance) on a biennial

basis to maintain the position. Should the position be filled for the remainder of fiscal 2017, the board would spend down its fund balance by fiscal 2018. If the position were filled in fiscal 2018, the board's fund balance would be depleted in fiscal 2020. If the board does not fill the position, the board will remain financially solvent through at least fiscal 2020.

Maryland License Fees High Relative to Neighboring Jurisdictions

As noted above, board revenues come from fees paid by individuals and entities licensed, permitted, or registered by the board. An issue specifically noted in DLS survey responses was the difference between the fees charged in Maryland (particularly to morticians, who currently pay \$600 for a biennial license) and in the surrounding states. Approximately 46% of survey respondents indicated that they are also licensed in another jurisdiction. Due to variations in the way fees are assessed across states, it is difficult to determine a percentage or ratio by which Maryland fees exceed those charged in other states. Each jurisdiction has its own system of dividing costs between application fees, surcharges, inspection charges, certificate reissuance charges, *etc.* **Exhibit 3.2** contains a summary of selected licensing fees charged in neighboring states; a list of representative fees charged by each state can be found in **Appendix 2**. Although direct comparisons are problematic, this analysis confirms that Maryland fees are higher, and in some instances substantially higher, than those charged in neighboring jurisdictions, which may reflect greater regulatory requirements in Maryland.

Exhibit 3.2
License Fees Charged in Maryland and Neighboring States

	<u>MD</u>	<u>DC</u>	<u>DE</u>	<u>PA</u>	<u>VA</u>	<u>WV</u>
Mortician ¹	\$600	\$225	\$153	\$400	\$325	\$200
Funeral Director ²	600	-	-	-	-	200
Funeral Establishment	700	540	320	125	600	500
Inspection ³	50	-	-	-	-	200
Transportation Company	350-1,000	-	-	-	325	-

¹Some jurisdictions, such as Delaware, use the term “funeral director” rather than “mortician” to refer to an individual licensed to provide funeral services and embalming.

²The term “funeral director” refers to an individual who is not permitted to perform embalming.

³In Maryland, inspection fees may be assessed following noncompliance.

Additional Notes: Fees reflect initial licensure fees and the cost of a two-year license. Some jurisdictions, such as Virginia, have lower renewal fees, while others, such as West Virginia, have renewal fees that are higher than initial licensure fees. A dash indicates that there is no comparable license in that jurisdiction.

Source: Department of Legislative Services

Board Fees Should Be Reassessed

As discussed in Chapter 2, DLS found that the board's personnel resources have not kept pace with the expanded regulatory responsibilities placed on it. However, the board does not appear to have biennial revenues sufficient to sustainably fund its vacant position past fiscal 2020 (or even fiscal 2018, should the position be filled in fiscal 2017). Furthermore, as the regulatory scope of the board has expanded, the board's workload has shifted. Discussions with board members and staff indicate that a significant amount of time has been required to implement the new crematory and transporter permits and registrations, enforce pre-need statutes, provide continuing education training, and conduct inspections. Although some of these activities were one-time efforts to license and permit new groups of regulated individuals and entities, it is clear that the license base has increased and that the board requires an additional compliance officer. Further, as the number of individuals and entities regulated has expanded, current board fees may no longer accurately reflect the board's workload for each group.

Thus, DLS recommends that a workload analysis be conducted to ensure that fees from the various groups that the board regulates are sufficient to cover the efforts expended in those areas. Because the board already has staffing and fiscal constraints, DHMH should assist in conducting this analysis. A similar analysis has been completed for the State Board of Physicians.

Based on this workload analysis, the board should then conduct an internal fiscal analysis and reassess its fee schedules. Specifically, the board should determine whether specific groups should contribute more to its operations through increased fees, based on the time and effort required to regulate that group, and whether some fees could be reduced. The board should also seek to raise sufficient revenues to enable it to fund its vacant compliance analyst position and ensure sufficient personnel resources to fulfill its mission and responsibilities. While DLS acknowledges that board fees are currently high relative to those in surrounding jurisdictions, fees have not been increased since 2009 and should reflect the reasonable cost of regulating the industry as required by Maryland law.

Recommendation 4: DHMH should assist the board in conducting a workload analysis to determine whether fees collected from specific regulated groups adequately reflect the costs associated with regulating that group. Based on the workload analysis, the board should also conduct an internal fiscal analysis and reassess its fee schedule. The board should submit a follow-up report to DLS by January 1, 2018, with the results of the analyses, including any proposed changes to the board's fee schedules. In that report, the board should specifically comment on the status of filling the vacant position and the impact of filling the position on the board's expenditures and fund balance.

Chapter 4. Survey Results and Industry Perceptions of the Board

As part of this evaluation of the State Board of Morticians and Funeral Directors, the Department of Legislative Services (DLS) collected and analyzed data from a wide array of sources. This work included interviewing board members and staff, industry association representatives and members, and conducting a survey of individuals regulated by the board. This chapter presents the results of the survey and discusses industry perceptions of the board. While DLS review of the board and the majority of survey responses indicate that the board operates fairly, a troubling negative perception of the board exists among some industry members, which must be addressed.

Survey Provides Context and Perspective on Board and Industry

The purpose of the survey was to provide critical context and perspective on the board and the funeral industry in the State. A personalized link to the survey was sent by email to every licensee, permit holder, and registrant who had an email address on file with the board. Thus, although the board issued a total of 1,790 licenses, permits, and registrations in fiscal 2016, the survey was sent to 1,077 recipients, as some individuals hold multiple licenses, registrations, or permits or did not have an email address on file with the board. DLS received responses from 550 individuals (a response rate of 51%), including 424 who identified themselves as morticians (approximately 46% of all morticians licensed by the board); 138 who identified themselves as holding funeral establishment licenses (representing approximately 48% of all funeral establishments licensed by the board); and 84 who identified themselves as crematory operators (approximately 58% of all crematory operators licensed by the board). A summary of the results of the full survey can be found in **Appendix 1**.

Survey responses provided insight into the demographics of the funeral industry in Maryland. The vast majority of respondents (81%) were licensed morticians, most of whom (63%) work in family-owned funeral establishments. Most respondents (75%) have been practicing in the funeral industry in Maryland for at least 10 years, while more than half (52%) have been practicing for at least 20 years. Almost half of respondents (46%) are also licensed in at least one neighboring jurisdiction. Although most respondents are a member of at least one professional association, 39% indicated they are not members of any Maryland associations. The three biggest associations represented by survey respondents were the Maryland State Funeral Directors Association (39% of respondents indicated that they are members), Delmarva Funeral Service Association (16% of respondents indicated that they are members), and Tri-County Funeral Directors Association (11% indicated that they are members).

Industry Largely Finds Regulation Excessive

Throughout the sunset evaluation process, DLS heard through interviews and survey responses that some licensees believe that the board overregulates the industry. The majority of survey respondents (62%) felt that Maryland laws and regulations governing the funeral industry are either “somewhat excessive” or “excessive.” The increase in regulation of the industry prompted by legislative and regulatory changes in recent years may play a role in this perception.

Respondents Divided on Uniformity/Fairness of Board Members

DLS also heard in interviews and survey comments critiques about the fairness of the board. On questions regarding whether the board enforces laws and regulations and handles disciplinary actions uniformly/fairly, as well as whether board members are impartial/professional, survey responses were split almost evenly with about half of respondents replying that they “strongly agree,” “agree,” or “somewhat agree,” and about half replying that they “somewhat disagree,” “disagree,” or “strongly disagree.”

Some Respondents Concerned with Inspection and Disciplinary Processes

Inspection Process

The survey included specific questions for funeral establishment licensees and crematory permit holders about whether they were cited for inspection violations. Only 15.0% of respondents who hold a crematory permit and 28.5% of individuals who hold a funeral establishment license indicated that they had been cited for an inspection violation. Further, the majority of crematory permit holders and funeral establishment licensees agreed that the inspection standards are clear as well as that inspectors conduct inspections in an impartial and professional manner.

However, some survey comments included complaints about vague inspection forms that do not include statutory or regulatory citations. For example, multiple respondents expressed a concern that the board was “making up requirements” as it went along. After reviewing inspection forms and conducting interviews, DLS notes that the inspector and executive director often offer suggestions or “best practices” based on what they have observed in other establishments or believe to be the logical extension of statute or regulation. Some respondents noted that facilities are being cited for violations of requirements, such as the presence of adequate ventilation or drainage in preparation rooms, for which they had not been cited during previous inspections. These facilities indicated that they are not required to have ventilation or drainage on the basis of being “grandfathered” under previous regulations. However, DLS is not aware of any authority that would allow establishments to be exempt from facility requirements based on when the relevant regulations were adopted.

Disciplinary Process

The survey also included questions about whether the respondent (or the respondent's establishment) had ever been investigated by or had disciplinary action taken by the board. Of the 537 respondents to those questions, 23.5% indicated "yes." The majority of these respondents indicated that they felt the handling of the complaint was fair.

Some survey respondents raised issues with the disciplinary process. For example, multiple respondents stated that they felt they needed to hire representation to defend themselves against a complaint when they received a records subpoena from the board only to discover that they were not the target of the investigation but were being contacted as a witness. Survey respondents also expressed frustration that the board was the final arbiter of disciplinary actions and explained that they wished that they could appeal decisions of the board to a separate body. DLS notes that licensees, permit holders, and registrants are generally entitled to appeal board decisions to the Office of Administrative Hearings.

DLS also observed a general sense among some licensees that the board shuts down or threatens to shut down establishments for relatively minor infractions. The board advises, and DLS review of public orders corroborates, that the board's authority to shut down an establishment is rarely utilized. The board has used its authority to issue summary suspensions of licenses to shut down funeral establishments and crematories, or to close establishments and crematories by consent order in consultation with licensees, only eight times in the last nine years. In all instances, the authority was used to address situations that posed a serious risk of harm to public health and safety. In all cases of summary suspension, hearing dates were provided soon after the initial suspension to afford due process to the affected parties and to negotiate corrections to the establishment that would be required before reopening. In one case, the establishment requested that no hearing be scheduled and the establishment was closed permanently. DLS review of board records indicates that the board appears to be fairly implementing Maryland statute through the complaint and disciplinary processes.

No Evidence to Indicate Impropriety, but Negative Perceptions Remain

While survey responses and board data indicate that the board handles inspections, investigations, and complaints fairly, a perception of unfairness, heavy-handedness, and overreaching authority persists among some licensees, which is a serious issue of concern and should be addressed promptly by the board.

Though DLS did not find evidence to indicate board impropriety, in order to maintain and improve the validity of the inspection and complaint process, the board should actively address several of the concerns raised in survey comments. To begin, the board should consider ways to continue to communicate to licensees the board's current interpretation of the existing transport regulations, which have been cited by some individuals as an example of the board overreaching its authority. The board should also clearly document and communicate to licensees board

complaint and investigation procedures. The board should also revise inspection forms and reports to enhance transparency and potentially build trust between the industry and the board. In revising inspection forms, the board should specifically (1) cite the statutory or regulatory authority for each requirement or violation and (2) clearly distinguish, in writing, between “deficiencies” and best practices. The board should also continue to communicate to the industry that current law and regulations do not allow grandfathering of establishments that are not compliant with statute and regulations.

In an effort to further increase transparency and understanding, the board should also examine and, if necessary, clarify subpoena procedures to ensure licensees, permit holders, and registrants understand whether they are the subject of an investigation or merely a witness. DLS recognizes that it is not always possible to provide notice to a licensee, permit holder, or registrant as to why the individual is being subpoenaed. Because information gleaned under subpoena may itself lead to an investigation of the witness, it may not be possible or appropriate for the board to classify the individual as a witness when the subpoena is issued.

If possible, the board should provide standardized language advising licensees of their ability to appeal a determination by the board, as well the rights of individuals appearing before the board or any informal complaint resolution body. This information should be provided both before and during the appearance. DLS heard from survey respondents that a complete explanation of the disciplinary process was not provided.

Recommendation 5: The board should take concrete steps to address the perception among some licensees that board actions are unfair, heavy-handed, or overreach board authority, including (1) clarifying board interpretation of mortuary transport service regulations; (2) documenting and communicating board complaint and investigation procedures to the regulated industry; (3) revising inspection forms and reports; and (4) communicating to the industry that current law and regulations do not allow grandfathering of establishments that are not compliant with statute and regulations.

Board Could Further Enhance Communication with Industry

While a majority of survey respondents (57%) indicated that they felt that the board kept licensees adequately informed, several indicated that they felt the board was not proactive enough in notifying licensees of board activities, interpretations, and clarifications. Some stated that they felt referring to the board’s website for updates was time consuming and ineffective. DLS notes that most health occupations boards only provide updates to their licensees via postings on their websites and that a policy of posting information to the website likely provides legally sufficient notice to licensees. DLS also notes that the board currently has a system in place where an individual volunteer board member distributes meeting minutes as well as other news and information about the board via email following board meetings.

DLS recommends that the process of distributing meeting minutes, as well as notice of new procedures, new deadlines, and clarification of policy be handled by board staff rather than a volunteer board member. This would allow communications to be sent out via one centralized, State-based email, drawing recipients directly from the licensee database, and allow recipients to respond directly to the email in order to ask questions of board staff. The transition would reduce the burden on volunteer board members and standardize the communications – likely taking the format of a regular board newsletter. In concert with this effort, board staff should work with current licensees, permit holders, and registrants to update email addresses in the licensee database and to gather email addresses for licensees, permit holders, and registrants not currently on file. DLS acknowledges that implementing these changes may require some coordination with shared information technology personnel within the Department of Health and Mental Hygiene.

Recommendation 6: Board staff should assume responsibility for the creation and distribution of meeting minutes and other board communications through one centralized email sent by board staff, in addition to posting information on the board’s website. Additional efforts should be made to collect or update email addresses for all licensees, permit holders, and registrants.

Industry Members Cite Multiple Barriers to Opening a Funeral Establishment

Throughout this evaluation process, DLS received a number of comments regarding the difficulty inherent in opening a new funeral establishment in Maryland. The most commonly identified barriers included education requirements, apprenticeship requirements, high license fees, difficulty entering the community of morticians and funeral directors, and the need to meet facility requirements.

Several survey respondents commented that the education requirements, which generally take two years to complete, are concerning in that the time it takes to obtain the required education prevents people from working for pay. Respondents also noted that the apprenticeship requirement does not adequately prepare morticians or funeral directors to “hit the ground running” or to own or operate their own establishment. Concerns were raised about the practical experience gained during the apprenticeship and whether the current metrics of completion, which include completing 1,000 hours of supervised practice and conducting 20 funerals, truly prepare apprentices to practice independently. **The board may wish to explore apprenticeship requirements in more detail to ascertain how well new licensees are prepared to practice.**

A number of respondents to the survey expressed concern with the high cost to maintain a license in the State, relative to surrounding states. While specific dollar amounts were not cited in responses, survey respondents referred to the combined cost of a funeral establishment license, a crematory license, mortician and crematory operator licenses, and a mortuary transport service license as being difficult to afford. Respondents also indicated that the requirements in statute and regulation, such as those pertaining to mortuary preparation room drainage and ventilation, refrigeration, and the permeability of surfaces, make opening a facility more expensive. They also raised issues around finding an adequate building and costs associated with purchasing a building

or leasing space with the ability to make required modifications. **In conducting the workload and fiscal analyses recommended in Chapter 3, the board may wish to take into consideration the cumulative impact of multiple fees on the industry.**

Several survey respondents noted the difficulty they experienced entering their local community of morticians and funeral directors, referencing acts of intimidation or what they perceived as unfair treatment by established owners in their area. Other respondents cited what they perceived to be unfair treatment by previous board members and inspectors (who are no longer connected to the board) who they believed to be affiliated with certain professional associations. Respondents who felt that they had experienced this discrimination frequently complimented the current board for what they considered the even application of statutes and regulations and for creating an “even playing field.”

Chapter 5. Conclusion

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the State Board of Morticians and Funeral Directors, which is scheduled to terminate July 1, 2018. This full evaluation was undertaken to provide the General Assembly with information to use in making the determination about whether to reauthorize the board and for what period of time. This report addresses the board's ability to carry out its core functions, the fiscal status of the board, license fees charged by the board relative to neighboring states, and the general perception of the board by the regulated industry. DLS finds that the board complies with its statutory mandate to regulate the funeral industry in the State. Board members are dedicated, productive, and professional as well as aware of ongoing issues with board operations.

While opinions about the board are divergent, DLS was unable to find evidence of significant dysfunction within the board or with the regulated industry as a whole. The board functions well despite its resource limitations and fulfills its licensing, inspection, complaint, disciplinary, and other regulatory duties. The board accomplishes this in large part due to the dedication of its staff, who frequently logs additional uncompensated hours to ensure that work is completed in a timely manner. Based on these findings, DLS recommends that the board's termination date be extended for 10 years. Uncodified language should be adopted in the 2017 session to require that the board submit a follow-up report to the General Assembly on or before October 1, 2019.

Recommendation 7: Statute should be amended to extend the termination date for the State Board of Morticians and Funeral Directors until July 1, 2028. Thus, another direct full evaluation should be conducted in 2026. Further, uncodified language should be adopted to require that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee on or before October 1, 2019, on the board's efforts to (1) ensure sufficient staff resources; (2) work with the Department of Health and Mental Hygiene to facilitate board recordkeeping and improve the board's website; (3) work to improve the negative perception of the board by some licensees; and (4) further enhance communications with the industry. The report should also outline actions taken based on the workload and fee analyses conducted earlier.

Chapter 6. Additional Research

As part of this sunset evaluation, the Department of Legislative Services (DLS) examined how elements of the funeral industry are regulated in other states and reviewed information on the pricing of basic funeral services across Maryland. This chapter presents this additional research as a supplement to the report's recommendations about the State Board of Morticians and Funeral Directors.

Maryland's Regulatory Structure Robust Compared with Neighboring States

DLS examined how elements of the funeral industry are regulated in other states. Generally, all of the surrounding jurisdictions (the District of Columbia, Delaware, Pennsylvania, Virginia, and West Virginia) regulate morticians, funeral directors, and funeral establishments. However, as discussed in Chapter 3, surrounding jurisdictions do not take the same approach to regulating these or the other related professions. For example, Maryland and Virginia structure their regulation of these professions with special emphasis on health occupations, including their regulatory bodies for the funeral industry under this broad umbrella (within the Department of Health and Mental Hygiene and the Department of Health Professions, respectively). By contrast, Delaware and Pennsylvania include their regulation of all professions under one broader agency, the Division of Professional Regulation and the Bureau of Professional and Occupational Affairs, respectively. These entities in Delaware and Pennsylvania cover a much broader scope of licenses, by regulating morticians, physicians, architects, geologists, and many other trades and professions through separate boards under the same umbrella agency.

Maryland also differs in the classes of licenses, permits, and registrations offered. For example, only Maryland and Delaware offer a license specific to funeral direction, while the surrounding jurisdictions offer only the full mortician license, which includes embalming. Additionally, among the neighboring states, only Maryland and Virginia currently offer mortuary transportation company licenses. In other surrounding jurisdictions, the requirements to transport human remains vary significantly. While mortuary transport is only lightly regulated nationwide, in the District of Columbia, an individual must be a fully licensed mortician in order to transport human remains. In contrast, in West Virginia, the Board of Funeral Service Examiners does not have any specific requirements or regulations for the transport of remains. Delaware also lacks a specific mortuary transport company license but does allow employees of licensed morticians to transport remains.

Due to the disparate levels of regulation, variations in the types of services offered to licensees by the regulating body, and the variety of regulatory regimes present, direct and detailed comparisons of fees are difficult and do not provide an accurate representation of the differences between each state's regulation of the industry. Generally, Maryland has a significantly more robust regulatory structure, focused on public health, consumer protection, and maintaining certain standards of human dignity. Fees associated with obtaining and renewing licenses, permits, and

registrations are higher in Maryland. Higher fees, however, may be appropriate given the increased duties of the board. DLS did not discover any evidence of overspending by the board.

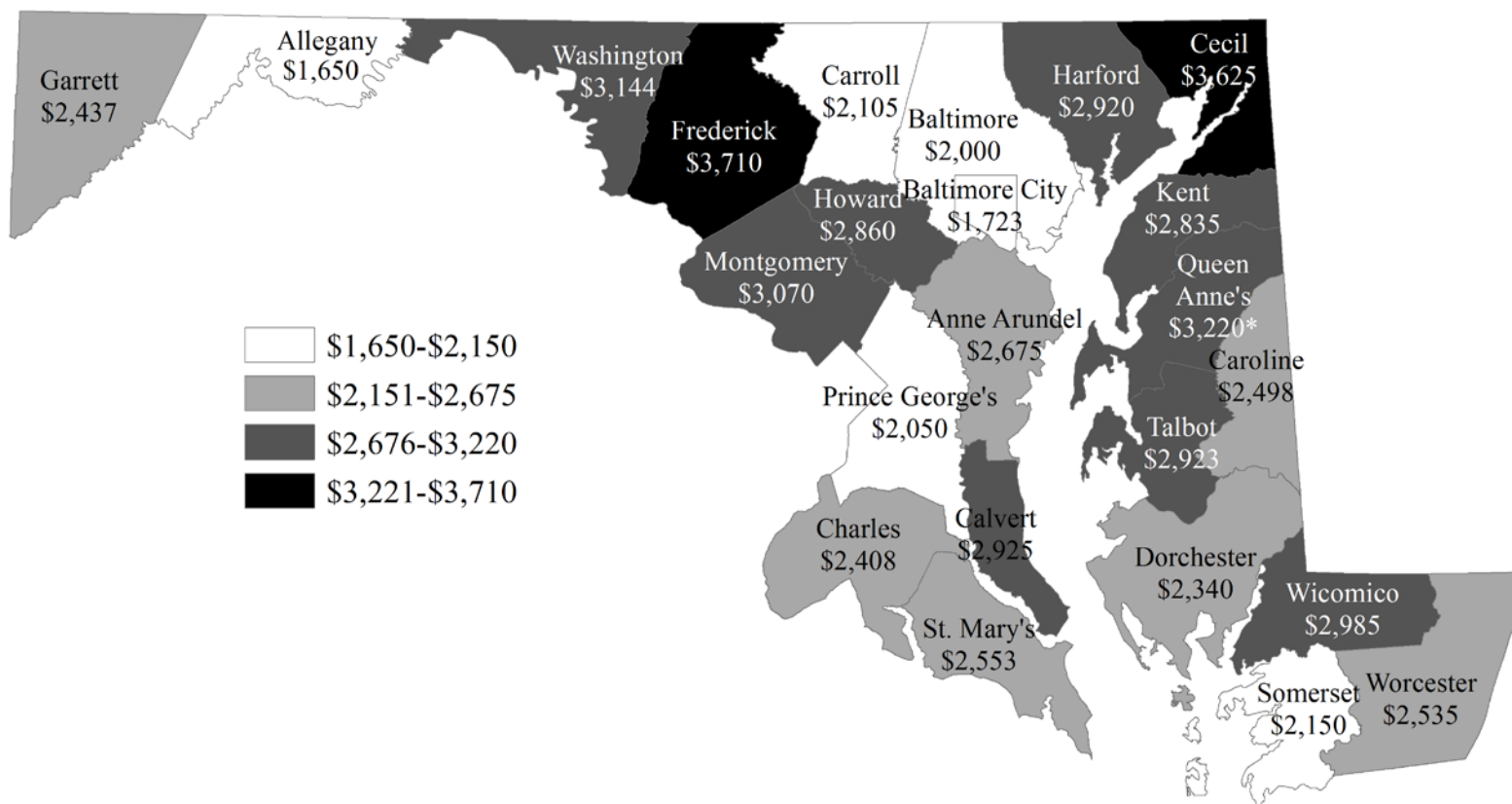
Price of Basic Funeral Services Varies Widely Across Maryland

The National Funeral Directors Association reports that the national average cost of a funeral, steadily rising each year, was approximately \$8,500 in 2014, up nearly 30% since 2004. This average cost includes basic burial service fees as well as additional fees for embalming, preparation of the body, use of facilities and staff for viewing, hearse rental, memorial cards, casket, and burial vault. As the baby boomer generation ages, the demand for funeral goods and services will only grow.

As part of this sunset review, DLS sought information on funeral pricing across Maryland. DLS identified a 2015 study, conducted by the Funeral Consumers Alliance of Maryland and Environs (FCAME), which solicited the cost of basic direct burial (the minimum service required for burial) and basic direct cremation (the minimum service required for cremation) from funeral establishments in the State. This study is available at <http://198.171.205.35/wp-content/uploads/2015/06/Price-Survey-FINAL-6.9.15.pdf>. Based on the 219 responses received, the average price of direct burial was \$2,486 and the average price of direct cremation was \$2,066. The lowest price for both services included in the report was \$650 (for both direct cremation and immediate burial in Baltimore City). The highest price included was \$6,500 (for direct cremation in Montgomery County).

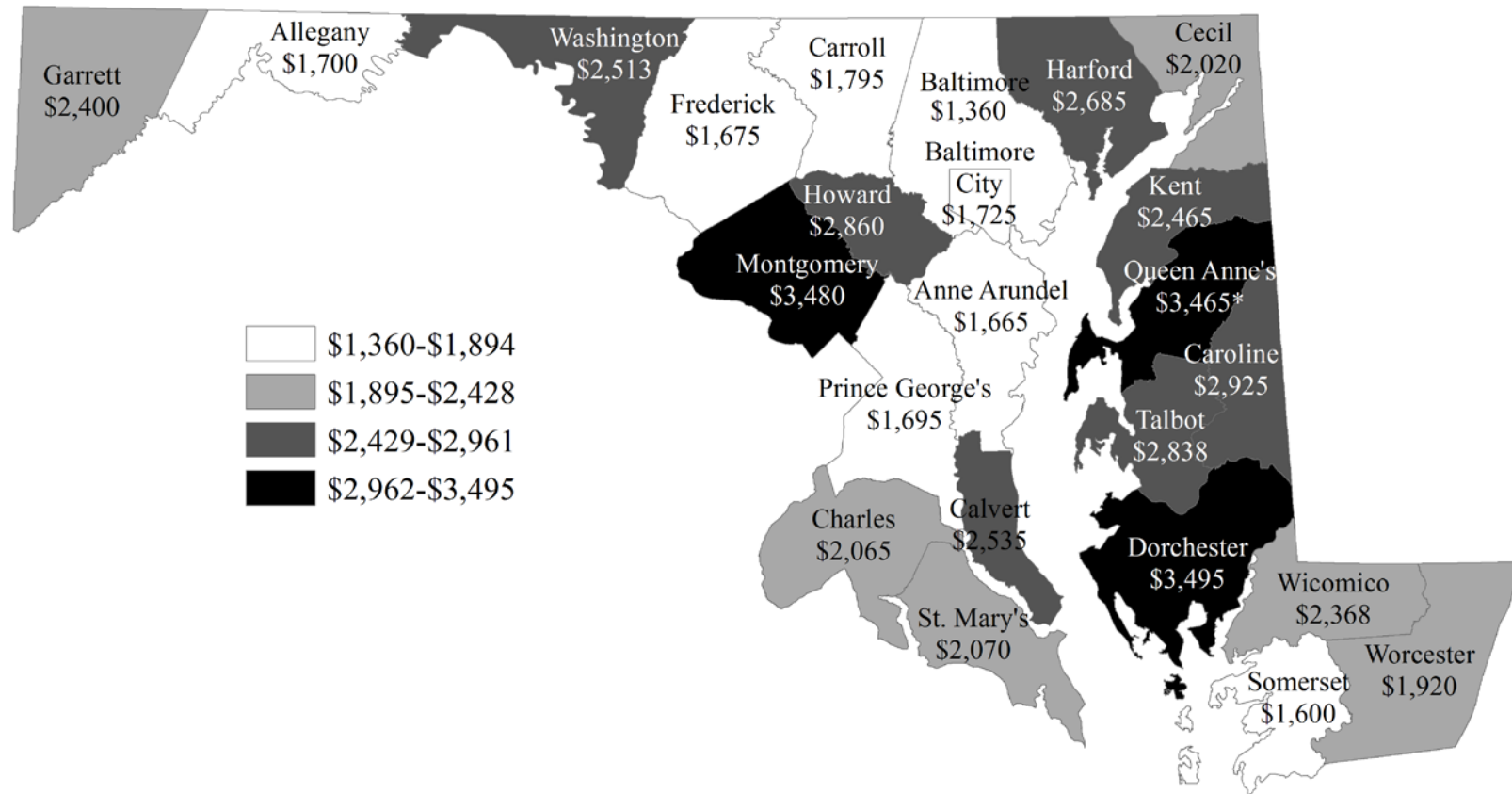
The data also revealed that prices varied significantly by region across the State. **Exhibit 6.1** displays variation in the average cost of direct burial by county. The average price ranges from \$1,650 in Allegany County to \$3,710 in Frederick County. **Exhibit 6.2** displays this data for the average cost of direct cremation by county, with the average price ranging from \$1,360 in Baltimore County to \$3,495 in Dorchester County.

Exhibit 6.1
Average Cost of Direct Burial in Maryland by County
Calendar 2015



Source: Funeral Consumers Alliance of Maryland and Environs; Department of Legislative Services

Exhibit 6.2
Average Cost of Direct Cremation in Maryland by County
Calendar 2015



Source: Funeral Consumers Alliance of Maryland and Environs; Department of Legislative Services

While the data provided by FCAME appears comprehensive, DLS was unable to independently replicate samples of the data using contemporary information provided by the board. Such issues with data reconciliation are likely the result of changes in prices since the completion of the FCAME analysis, differences in the pricing structure and price documentation provided by individual establishments (*i.e.*, additional fees for the removal of remains), and discrepancies between the price actually charged (or reportedly charged by the establishment) and the price included on documentation provided to the board.

It should be noted that Federal Trade Commission regulations require that funeral establishments have a price list of all services offered, and the price list must be provided upon request. However, there is no requirement that the price list be available online.

While the FCAME study did not explore the causes of the significant variations in prices, the Funeral Consumers Alliance of Minnesota published a study, also in 2015, which included an examination of the reasons why prices for direct cremation could vary by establishment. The study, which can be found at <http://fcaofmn.org/2015-direct-cremation-price-survey.html>, states that one reason direct cremation pricing varies is because it costs some funeral firms more to operate. If a funeral firm has a large facility, a fleet of cars, and a large staff, its overhead expenses are higher. The price is usually higher if a funeral firm is owned by a publicly traded corporation. Less overhead and noncorporate ownership generally mean a lower cost to the consumer. A similar logic could be applied to the differences in the cost of immediate burial.

Other factors that may influence the price of direct cremation or direct burial include services offered by the establishment that are included in the price. Examples of such services may be the basic cleaning or preparation of the body for cremation or burial, allowing an opportunity for a family or loved ones to see the deceased one final time, and the cost of basic burial or cremation containers used by the establishments. Costs associated with the transport of the deceased can also vary based on whether the establishment handles its own transportation or contracts with a mortuary transport company, whose rates also vary significantly. Establishments that do not operate their own crematory pass along to consumers the fees they incur with cremation.

While limitations in the available data prevent a more detailed analysis of the causes of price fluctuation, geographic factors may also influence the price of basic services. Where more establishments are concentrated (with greater competition), such as in Baltimore County, prices are relatively low. Where fewer establishments are available, such as in Queen Anne's County, prices are relatively high. Competition, or lack thereof, may also differ in a given county based on the type of service offered. For example, while the average cost of direct burial is relatively high in Frederick County, the average cost for direct cremation is relatively low, possibly due to the greater availability of cremation.

Appendix 1: Summary of Responses to the DLS Survey of Licensees and Registrants of the State Board of Morticians and Funeral Directors

The Department of Legislative Services (DLS), Office of Policy Analysis (OPA), of the Maryland General Assembly is evaluating the State Board of Morticians and Funeral Directors (board). As part of this evaluation, DLS is conducting a survey to gather feedback from members of the funeral industry regarding the performance of the board.

The survey primarily consists of multiple choice questions and should take no more than 10 minutes to complete.

Your responses will not be shared with the board or any other State agency.

Your responses will not be attributed to you by name.

The survey will close at midnight on September 30, 2016, so please respond by then. If you have any questions, please contact Kathleen P. Kennedy or Nathan W. McCurdy, Policy Analysts with DLS, by phone at (410) 946-5510 or (301) 970-5510, or by email at OPAsurveys@gmail.com or DLSsurveys@mlis.state.md.us.

Question 1:

1. In your opinion, Maryland laws/regulations governing the funeral industry are:						
Answer Options	Insufficient	Somewhat Insufficient	Reasonable	Somewhat Excessive	Excessive	Response Count
	11 (2%)	26 (5%)	157 (30%)	209 (41%)	112 (22%)	515 (100%)
Additional Comments						109
<i>Answered Question</i>						515
<i>Skipped Question</i>						35

Question 2:

2. Based on your experience with the board, please indicate your level of agreement with the following statements regarding board performance.							
Answer Options	Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree	Response Count
The board enforces laws/regulations uniformly/fairly.	42 (8%)	117 (22%)	96 (18%)	83 (16%)	85 (16%)	104 (20%)	527 (100%)
The board handles disciplinary actions uniformly/fairly.	36 (7%)	134 (26%)	108 (21%)	74 (14%)	89 (17%)	78 (15%)	519 (100%)
Board members and staff are impartial/professional.	37 (7%)	113 (22%)	89 (17%)	95 (18%)	84 (16%)	104 (20%)	522 (100%)
The board keeps industry members adequately informed regarding changes in laws/regulations.	45 (8%)	154 (29%)	109 (20%)	62 (12%)	66 (13%)	98 (18%)	534 (100%)
The board is accessible and responsive.	58 (11%)	169 (32%)	110 (21%)	68 (13%)	58 (10%)	68 (13%)	531 (100%)
Additional Comments							105
<i>Answered Question</i>							537
<i>Skipped Question</i>							13

Question 3:

3. Do you currently hold a crematory permit?		
Answer Options	Response Percent	Response Count
Yes	20.8%	114
No	79.2%	435
<i>Answered Question</i>		549
<i>Skipped Question</i>		1

Question 4:

4. Based on your experience with the board, please indicate your level of agreement with the following statements regarding the inspection of crematories by the board.							
Answer Options	Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree	Response Count
Inspection standards for crematories are clear.	5 (5%)	32 (29%)	25 (23%)	20 (18%)	16 (15%)	11 (10%)	109 (100%)
Inspection standards are applied uniformly across crematories.	6 (6%)	34 (31%)	24 (22%)	21 (19%)	12 (11%)	11 (10%)	108 (100%)
Inspectors conduct inspections of crematories in an impartial/professional manner.	13 (12%)	43 (39%)	22 (20%)	15 (14%)	8 (7%)	8 (7%)	109 (100%)
Inspections provide helpful feedback regarding ways to improve the operations of crematories.	7 (6%)	36 (33%)	30 (28%)	15 (14%)	10 (9%)	11 (10%)	109 (100%)
Inspection standards for crematories adequately protect consumers and the public.	15 (14%)	49 (45%)	21 (19%)	8 (7%)	7 (6%)	9 (8%)	109 (100%)
Business owners can comply with inspection standards for crematories without undue burden.	6 (6%)	22 (21%)	22 (21%)	17 (16%)	12 (11%)	28 (26%)	107 (100%)
Inspection forms clearly convey issues that need to be corrected.	11 (10%)	43 (40%)	32 (30%)	6 (6%)	9 (8%)	7 (6%)	108 (100%)
Additional Comments							28
<i>Answered Question</i>							109
<i>Skipped Question</i>							441

Question 5:

5. Has your crematory ever been cited for a violation of inspection standards?		
Answer Options	Response Percent	Response Count
Yes	15.3%	17
No	84.7%	94
<i>Answered Question</i>		111
<i>Skipped Question</i>		439

Question 6:

6. Did the inspection form related to the violation clearly convey the specific issues that needed to be corrected?		
Answer Options	Response Percent	Response Count
Yes	82.4%	14
No	17.6%	3
If no, please explain.		3
<i>Answered Question</i>		17
<i>Skipped Question</i>		533

Question 7:

7. Do you currently hold a funeral establishment license?		
Answer Options	Response Percent	Response Count
Yes	40.3%	219
No	59.7%	325
<i>Answered Question</i>		544
<i>Skipped Question</i>		6

Question 8:

8. Based on your experience with the board, please indicate your level of agreement with the following statements regarding the inspection of funeral establishments by the board.							
Answer Options	Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree	Response Count
Inspection standards for funeral establishments are clear.	21 (10%)	60 (28%)	46 (22%)	31 (15%)	24 (11%)	29 (14%)	211 (100%)
Inspection standards are applied uniformly across funeral establishments.	18 (9%)	57 (28%)	34 (16%)	35 (17%)	28 (14%)	35 (17%)	207 (100%)
Inspectors conduct inspections of funeral establishments in an impartial/professional manner.	29 (14%)	75 (36%)	43 (20%)	25 (12%)	15 (7%)	23 (11%)	210 (100%)
Inspections provide helpful feedback regarding ways to improve the operations of funeral establishments.	29 (14%)	57 (27%)	58 (28v)	24 (11%)	21 (10%)	21 (10%)	210 (100%)
Inspection standards for funeral establishments adequately protect consumers and the public.	33 (16%)	81 (38%)	50 (24%)	18 (9%)	12 (6%)	17 (8%)	211 (100%)
Business owners can comply with inspection standards for funeral establishments without undue burden.	17 (8%)	52 (25%)	40 (19%)	29 (14%)	29 (14%)	42 (20%)	209 (100%)
Inspection forms clearly convey issues that need to be corrected.	28 (13%)	94 (45%)	55 (26%)	14 (7%)	7 (7%)	13 (6%)	211 (100%)
Additional Comments							44
<i>Answered Question</i>							211
<i>Skipped Question</i>							339

Question 9:

9. Has your funeral establishment ever been cited for a violation of inspection standards?		
Answer Options	Response Percent	Response Count
Yes	28.5%	61
No	71.5%	153
<i>Answered Question</i>		214
<i>Skipped Question</i>		336

Question 10:

10. Did the inspection form related to the violation clearly convey the specific issues that needed to be corrected?		
Answer Options	Response Percent	Response Count
Yes	78.7%	48
No	21.3%	13
If no, please explain.		12
<i>Answered Question</i>		61
<i>Skipped Question</i>		489

Question 11:

11. Do you hold a transport license or permit?		
Answer Options	Response Percent	Response Count
Yes	12.5%	67
No	87.5%	471
<i>Answered Question</i>		538
<i>Skipped Question</i>		12

Question 12:

12. Based on your experience with the board, please indicate your level of agreement with the following statements regarding the inspection of mortuary transport services by the board.							
Answer Options	Strongly Agree	Agree	Somewhat Agree	Somewhat Disagree	Disagree	Strongly Disagree	Response Count
Inspection standards for mortuary transport services are clear.	8 (12%)	28 (42%)	8 (12%)	5 (8%)	8 (12%)	9 (14%)	66 (100%)
Inspection standards are applied uniformly across mortuary transport services.	7 (11%)	22 (34%)	13 (20%)	7 (11%)	6 (9%)	10 (15%)	65 (100%)
Inspectors conduct inspections of mortuary transport services in an impartial/professional manner.	7 (11%)	26 (40%)	15 (23%)	3 (5%)	5 (8%)	9 (14%)	65 (100%)
Inspections provide helpful feedback regarding ways to improve operations of mortuary transport services.	9 (14%)	23 (35%)	15 (23%)	4 (6%)	6 (9%)	8 (12%)	65 (100%)
Inspection standards for mortuary transport services adequately protect consumers and the public.	10 (16%)	29 (45%)	10 (16%)	1 (2%)	5 (8%)	9 (14%)	64 (100%)
Business owners can comply with inspection standards for mortuary transport services without undue burden.	6 (9%)	20 (31%)	12 (19%)	4 (6%)	7 (11%)	15 (23%)	64 (100%)
Inspection forms clearly convey issues that need to be corrected.	9 (14%)	28 (43%)	15 (23%)	5 (8%)	2 (3%)	6 (9%)	65 (100%)
Additional Comments							13
<i>Answered Question</i>							66
<i>Skipped Question</i>							484

Question 13:

13. Has your mortuary transport service ever been cited for a violation of inspection standards?		
Answer Options	Response Percent	Response Count
Yes	4.3%	3
No	95.7%	66
<i>Answered Question</i>		69
<i>Skipped Question</i>		481

Question 14:

14. Did the inspection form related to the violation clearly convey the specific issues that needed to be corrected?		
Answer Options	Response Percent	Response Count
Yes	66.7%	2
No	33.3%	1
If no, please explain.		1
<i>Answered Question</i>		3
<i>Skipped Question</i>		547

Question 15:

15. Has the board ever investigated you (or your establishment) or taken disciplinary action against you (or your establishment)?		
Answer Options	Response Percent	Response Count
Yes	23.5%	126
No	76.5%	411
<i>Answered Question</i>		537
<i>Skipped Question</i>		13

Question 16:

16. Did board correspondence clearly convey the process required to resolve the investigation or disciplinary action?		
Answer Options	Response Percent	Response Count
Yes	65.9%	83
No	34.1%	43
If no, please explain.		38
<i>Answered Question</i>		126
<i>Skipped Question</i>		424

Question 17:

17. How long have you been practicing in the funeral industry in Maryland?		
Answer Options	Response Percent	Response Count
Less than 1 year	2.7%	14
1 to 4 years	9.9%	52
5 to 9 years	12.4%	65
10 to 19 years	22.8%	120
20 to 29 years	22.2%	117
30 to 39 years	15.4%	81
40 to 49 years	9.9%	52
50+ years	4.8%	25
<i>Answered Question</i>		526
<i>Skipped Question</i>		24

Question 18:

18. Please indicate if you are a member of any of the following associations (select all that apply)		
Answer Options	Response Percent	Response Count
Delmarva Funeral Service Association	16.4%	85
Maryland Cemetery, Funeral, and Cremation Association	3.5%	18
Maryland State Funeral Directors Association	39.1%	202
Funeral Directors and Morticians Association of Maryland	6.8%	35
Tri-County Funeral Directors Association	10.8%	56
Western Maryland Funeral Directors Association	0.2%	1
None	39.3%	203
Other (please specify)	19.1%	99
<i>Answered Question</i>		517
<i>Skipped Question</i>		33

Question 19:

19. Do you hold a credential (license, permit, <i>etc.</i>) to practice in any state other than Maryland? Please indicate all that apply.		
Answer Options	Response Percent	Response Count
None	54.0%	281
Delaware	9.6%	50
District of Columbia	21.7%	113
Pennsylvania	9.4%	49
Virginia	17.7%	92
West Virginia	4.6%	24
Other (please specify)	5.4%	28
<i>Answered Question</i>		520
<i>Skipped Question</i>		30

Question 20:

20. In which jurisdiction do you primarily work?		
Answer Options	Response Percent	Response Count
Allegany County	1.8%	8
Anne Arundel County	7.5%	34
Baltimore City	12.1%	55
Baltimore County	14.3%	65
Calvert County	2.6%	12
Caroline County	1.3%	6
Carroll County	5.3%	24
Cecil County	1.1%	5
Charles County	1.8%	8
Dorchester County	1.3%	6
Frederick County	2.9%	13
Garrett County	0.9%	4
Harford County	4.4%	20
Howard County	3.3%	15
Kent County	1.1%	5
Montgomery County	7.9%	36
Prince George's County	10.5%	48
Queen Anne's County	0.2%	1
Somerset County	0.4%	2
St. Mary's County	0.9%	4
Talbot County	0.4%	2
Washington County	2.0%	9
Wicomico County	2.6%	12
Worcester County	0.9%	4
Out of State	8.1%	37
n/a	4.4%	20
Answered Question		455
Skipped Question		95

Question 21:

21. Which board-issued credential(s) do you currently hold? Please indicate all that apply.		
Answer Options	Response Percent	Response Count
Apprentice	2.1%	11
Courtesy Card	4.4%	23
Crematory Operator	16.0%	84
Crematory Permit	8.2%	43
Funeral Director	35.4%	186
Funeral Establishment	26.3%	138
Mortician	80.8%	424
Mortuary Transport Service	6.3%	33
Other (Please Specify)	1.7%	9
<i>Answered Question</i>		525
<i>Skipped Question</i>		25

Question 22:

22. Where are you currently employed?		
Answer Options	Response Percent	Response Count
Sole Proprietor Funeral Establishment	13.2%	69
Family-owned Funeral Establishment	63.0%	328
Corporate-owned Funeral Establishment	10.4%	54
Crematory	6.7%	35
Mortuary Transport Service	3.3%	17
Self-employed	11.3%	59
Retired	3.1%	16
Unemployed	1.5%	8
Other (Please Specify)	6.3%	33
<i>Answered Question</i>		521
<i>Skipped Question</i>		29

Question 23:

23. Please provide a phone number where you can be reached. Providing a phone number is not required but will allow us to ask follow-up questions if necessary. Your responses will not be attributed to you by name, and the completed surveys will not be shared with the board or any other State agency.		
Answer Options	Response Percent	Response Count
Name	96.6%	255
Phone Number	96.2%	254
<i>Answered Question</i>		264
<i>Skipped Question</i>		286

Question 24:

24. Please provide any additional information you would like for us to consider in our evaluation of the board.	
Answer Options	Response Count
	153
<i>Answered Question</i>	153
<i>Skipped Question</i>	397

Appendix 2: Summary of License Fees Charged in Neighboring States

District of Columbia

Initial Application and Licensing Fees

(Additional exam fees may apply)

Application fee: \$65

Apprentice license: \$110

Funeral director: \$120

Funeral establishment: \$540

Renewal Fees

Funeral director renewal: \$105

Courtesy card: \$165

Delaware

Processing Fees for License Applications

Funeral director: \$153

Funeral establishment: \$320

Funeral resident intern: \$56

Renewal Fees

Licensees are notified of the amount of the renewal fee at the time of renewal. All renewals require a renewal fee. When licensees submit a renewal application after the expiration date, they must pay a late fee that is 50% of the renewal fee.

Pennsylvania

Initial Licensure and Registration Fees

Student trainee: \$25

Resident intern: \$25

Preceptor or change: \$25

Funeral director: \$25

Restricted business corporation, professional corporation, partnership, or shared funeral establishment: \$150

Estate or widow, sole proprietorship, or branch office: \$125

Supervisor: \$25

Ongoing Registration Fees

Annual registration for student trainee: \$15

Change director or name on existing license without re-inspection: \$35

Address change with inspection: \$125

Re-inspection after failure: \$85

Certification: \$25

Verification of licensure or registration: \$15

Biennial renewal: \$400

Application for limited license: \$35

Biennial renewal of limited license: \$35

Application for continuing education course: \$100

Application for continuing education provider: \$100

Renewal of registration of continuing education provider: \$50

Virginia

Initial Licensure and Registration Fees

License to practice funeral service or as a
funeral director or an embalmer: \$325
Funeral service establishment license: \$600
Surface transportation and removal service
registration: \$325
Courtesy card: \$325
Crematory: \$250

Renewal of Licensure or Registration Fees

License to practice funeral service or as a
funeral director or an embalmer: \$225
Funeral service establishment license: \$400
Surface transportation and removal service
registration: \$300
Courtesy card: \$300
Crematory: \$200

Other Fees

There are numerous other fees for reinstatement, registration of continuing education providers, duplicate certificates, *etc.* Additionally, for the period between January 14, 2015, and January 14, 2017, licensees are also required to pay additional “shortfall reduction fees” ranging from \$45 to \$70 to offset budget shortfalls.

West Virginia

License and Registration Fees

Funeral director: \$200
Embalmer: \$200
Funeral service initial: \$160
Funeral service renewal: \$200
Apprentice initial: \$175
Extra year of apprentice registration: \$100

Establishments

Inspections of establishments: \$200/each
Certified continuing education provider
(annual): \$150
Reciprocal funeral director and embalmer
licenses: \$25 in addition to statutory fees
Main funeral establishment initial: \$500
Main funeral establishment renewal: \$400
Branch initial issuance: \$350
Branch renewal: \$27

Appendix 3: Draft Legislation

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Simpson

Typed by: David

Stored – 11/28/16

Proofread by _____

Checked by _____

By: **Leave Blank**

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Morticians and Funeral Directors – Sunset Extension and**
 3 **Program Evaluation**

4 FOR the purpose of continuing the State Board of Morticians and Funeral Directors in
 5 accordance with the provisions of the Maryland Program Evaluation Act (sunset law)
 6 by extending to a certain date the termination provisions relating to the statutory
 7 and regulatory authority of the Board; requiring that an evaluation of the Board and
 8 the statutes and regulations that relate to the Board be performed on or before a
 9 certain date; altering the circumstances under which a body of a decedent may be
 10 transported for preparation or storage to a facility that is not within the jurisdiction
 11 of the State, licensed by the Board, or permitted by the Office of Cemetery Oversight;
 12 requiring the Board to conduct a certain workload analysis and a certain fiscal
 13 analysis and submit a certain report to the Department of Legislative Services on or
 14 before a certain date; requiring the Board to report on or before a certain date to
 15 certain committees of the General Assembly on certain Board action and efforts; and
 16 generally relating to the State Board of Morticians and Funeral Directors.

17 BY repealing and reenacting, with amendments,
 18 Article – Health – General
 19 Section 5–513(g)
 20 Annotated Code of Maryland
 21 (2015 Replacement Volume and 2016 Supplement)

1 BY repealing and reenacting, with amendments,
2 Article – Health Occupations
3 Section 7–702
4 Annotated Code of Maryland
5 (2014 Replacement Volume and 2016 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – State Government
8 Section 8–405(b)(2)
9 Annotated Code of Maryland
10 (2014 Replacement Volume and 2016 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That the Laws of Maryland read as follows:

13 **Article – Health – General**

14 5–513.

15 (g) (1) Except as provided in paragraph (2) of this subsection, while the body
16 of a decedent is in the custody of a funeral establishment or crematory in the State, the
17 body may not be transported for preparation or storage to a facility that is not within the
18 jurisdiction of the State, licensed by the State Board of Morticians and Funeral Directors,
19 or permitted by the Office of Cemetery Oversight.

20 (2) The body of a decedent may be transported for preparation or storage
21 to a facility that is not within the jurisdiction of the State, licensed by the State Board of
22 Morticians and Funeral Directors, or permitted by the Office of Cemetery Oversight if:

23 (i) [The facility has entered into a written agreement with the State
24 Board of Morticians and Funeral Directors or the Office of Cemetery Oversight to allow the
25 State to make unannounced inspections of the facility; and

26 (ii) The person authorized to arrange for the final disposition of the
27 body under § 5–509 of this subtitle:

1 1. Has given written permission for the body to be
2 transported to the facility; or

3 2. A. Has given oral permission for the body to be
4 transported to the facility; and

5 B. Within 36 hours after giving oral permission, provides
6 written verification of the oral permission; AND

7 **(II) THE PERMISSION REQUIRED UNDER ITEM (I) OF THIS**
8 **PARAGRAPH IS GIVEN TO THE FUNERAL HOME OR CREMATORY IN THE STATE THAT**
9 **HAS CUSTODY OF THE BODY BEFORE THE BODY IS TRANSPORTED.**

10 **Article – Health Occupations**

11 7–702.

12 Subject to the evaluation and reestablishment provisions of the Program Evaluation
13 Act, this title and all rules and regulations adopted under this title shall terminate and be
14 of no effect after July 1, [2018] **2028**.

15 **Article – State Government**

16 8–405.

17 (b) Each of the following governmental activities or units and the statutes and
18 regulations that relate to the governmental activities or units are subject to full evaluation,
19 in the evaluation year specified, without the need for a preliminary evaluation:

20 (2) Morticians and Funeral Directors, State Board of (§ 7–201 of the Health
21 Occupations Article: [2016] **2026**);

22 SECTION 2. AND BE IT FURTHER ENACTED, That on or before January 1, 2018,
23 the State Board of Morticians and Funeral Directors shall:

24 (1) conduct:

(i) a workload analysis to determine whether fees collected from each group regulated by the Board adequately reflect the costs associated with regulating that group; and

(ii) an internal fiscal analysis, including a reassessment of its fee schedule; and

(2) submit a report to the Department of Legislative Services on:

(i) the findings of the Board's workload analysis;

(ii) the findings of the Board's internal fiscal analysis and reassessment of its fee schedule;

(iii) any proposed changes to the Board's fee schedule; and

(iv) the status of filling the vacant staff position and, if filled, the impact of filling the position on the Board's expenditures, the fund balance, and the number of overtime hours worked by Board staff.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2019, the State Board of Morticians and Funeral Directors shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee, in accordance with § 2-1246 of the State Government Article, on:

(1) Board action taken in response to the findings of the workload analysis and internal fiscal analysis required to be conducted by the Board under Section 2 of this Act; and

(2) Board efforts to:

(i) ensure sufficient staff resources;

(ii) work with the Department of Health and Mental Hygiene to facilitate Board recordkeeping and improve the Board's Web site;

(iii) work to improve the negative perception of the Board by some licensees; and

1 (iv) further enhance communications with the industry.

2 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June
3 1, 2017.

Appendix 4: Written Comments of the State Board of Morticians and Funeral Directors

STATE OF MARYLAND



DHMH

Maryland Department of Health and Mental Hygiene

Larry Hogan, Governor – Boyd K. Rutherford, Lt. Governor – Van T. Mitchell, Secretary

November 22, 2016

Mr. Warren Deschenaux

Executive Director

Office of the Executive Director

Legislative Services

90 State Circle

Annapolis, Maryland 21401

Dear Mr. Deschenaux,

Please find, below, the formal comments of the Board. We would like to commend the professionalism of the policy analysts.

BOARD OF MORTICIANS AND FUNERAL DIRECTORS

COMMENTS, IN RESPONSE TO THE 2016 SUNSET REVIEW

Chapter 1, Page 1

The Board is pleased that the recommendation is to extend the termination date of the Board by 10 years, until 2028. This is both confirming to the Board that the evaluators recognize the important work the Board does to protect the health and safety of the public and to help educate our licensees. We will strive to continue good work to keep the industry professional and protect the very vulnerable decedents of the State and their families.

In regard to repealing the Board's authority to inspect out of State establishments under certain circumstances, the Board will follow this recommendation. Since the Board does not carry out that practice, and has not since November, 2012, there will be no change in present practice.

The Board certainly appreciates the summary of Recommendations, however, does fear that it will be near impossible to carry out filling the existing vacant position without raising some fees and collecting others that, to date, the Board has routinely not collected. The Board will undertake the Workload analysis to see more clearly what licensee group are time consuming for the Board and staff.

In regard to the perception of the Board, the Board will continue its constant and sincere efforts in this regard. Certainly, it is best for all to have the good working relationship the Board has with most licensees, with all licensees.

Chapter 1, Page 10- Mortuary Transport Proving Problematic

In regard to the Transport Permits and regulations, the Board must point out that the Board has always given consistent information regarding its own interpretation of the laws passed by the Legislators. The Board is clear on its intent when it introduced the legislation and what protections it was trying to put in for the public health and the human dignity of decedents. However, as the Board's AAG's opinion changed so did the information given by the Board, in line with new AG opinion. The Board has not changed its opinion of the need for the original intent of the Legislation. The Board is acting in respect for the interpretation of the laws by the AG. The inconsistency has, in great part, been due to licensees, associations and others interpreting the law for the Board and giving out their own information, not consistent with or in conjunction with the Board.

Chapter 2, Page 12-Data Discrepancies

The Board is frustrated by these discrepancies. It believes that it must work with DHMH IT to create a more suitable data base that keeps pace with the many license categories and time frames the Board keeps information on and logs into the system. The Data system is utilized by a number of Boards with differing needs and therefore does not capture statistics in the same way as Board staff does, monthly.

The Board and the Data system must be utilizing the same time frames and nomenclature, which this study showed needs work to get on the same page. One example of this is that if an active licensee is put on probation, the data system drops that active licensee as active, in order to capture the probationary status.

Chapter 2, Page 13- Strides in Facilitating Initial license and renewal

The Board does always strive to issue licenses in a timely manner. The two factors that affect this are that the Board votes on each initial license, therefore, there is no issuance until the Board meets. Additionally, and more importantly, Board staff in receipt of an application that is incomplete, does not send the application back as incomplete thus changing the application date until it comes back to the Board completed. Board staff makes calls and sends written communication in order to help complete applications for licensees, so that they can go to the next Board vote. However, the initial received date does not change. The Board believes this is licensee friendly and supportive, although greater work for Board staff.

Chapter 2, Page 15-Exhibit 2.2

The Board merely would like to point out that 23% of the complaints received in 2016 were in regard to unlicensed practice. This is bad for consumers and the public health, but also a detriment to the integrity and value of a license for all licensees. Also, worth mentioning is that 32% of the complaints received in 2016 were related to Pre Need issues, again important to the protection of consumers and the integrity of the profession as a WHOLE.

The Board believes it is important to note that 28% of complaints are closed with no action against the licensee and another 37% were closed with letters of education to licensees. This, therefore shows that the Board, after fully investigating all complaints voted open, 65% are closed with no disciplinary action. Only 7% of all complaints were closed with a public order of discipline. The Board continues to strive to educate as an important way to protect the consumer and the profession.

Chapter 2, Page 16-Total disposition

The Board receives complaints from a variety of sources. Clearly, it is reasonable to expect a certain number of complaints to come in via phone call from grieving families whose complaint may be time sensitive to their loved one's disposition. Therefore, the Board would like to point out that in fiscal 2016, 85 or 48% of all complaints came in written form from a consumer, 49 Or 28% were generated by the Board's Inspector as a result of an inspection or audit and the lowest number, 43 or 24% came to the Board as Board information, either from consumer calls or information to Board members.

Chapter 4, Page 25- Disciplinary Process

Please see the attached subpoenas which had already been changed to address this issue, although staff was always responsive to questions regarding subpoenas, without giving specific information on areas to be explored. The investigation process must be kept clean.

In regard to whether the receiver of a subpoena is the Respondent, letters to the Respondent go out for response. However, the Board did note that if a subpoena was sent to a licensee that is not the Respondent, they would not have known that. The Respondents would know because of the request for response, example attached.

Chapter4, Page 26- Regarding perception of impropriety

In regard to the Board disclosing due process information, the Board tries to resolve all complaints that may need disciplinary orders with Complaint Resolution Conferences. It sends a letter suggesting such a resolution with full explanation. It also reads a statement to the licensee before the CRC begins. These are not full hearings with a quorum of the Board. If there is agreement, the Consent orders contain statements regarding attorney review and the waiving of the appeal process because of the agreement. These documents showing full disclosure are attached. The Board believes that the licensees may be mixing the processes.

Chapter 4, Page 27- Barriers to opening a funeral establishment

The Board prides itself in helping licensees open an establishment, allowing restricted establishments in order to not need an investment for bricks and mortar. Board staff meets with licensees to help them understand the regulations and the process.

In regard to the education requirements and apprenticeship, the Board has been concerned that licensees may not have enough experience and have revised the Apprenticeship regulations (10.29.09), which have been signed by the Secretary and will be posted in the Maryland Register for comment. See attachment.

Chapter 4, Page 28- Cumulative fees

The Board took into consideration that some morticians may choose to also have a Crematory or Transport Company in addition to their Funeral Establishment and therefore, made the fees for those establishments, the additional businesses to funeral establishments, approximately half the business expense. There is profit for those establishments and are not establishments required of funeral establishments. The Board does much work with these additional establishments, including inspection. There are those entities that have crematories and or Transport companies that do not have establishments and therefore benefit from the lower fees. The Board did register Transporters with a onetime only fee, however still trains, services questions and investigates these individuals.

Chapter Appendix-Question 3, 21, and 23

It should be noted that 114 persons answering the survey stated they held a Crematory permit. There are only 37 permits issued by the Board. Similarly, in question 21, 43 said they held a permit.

On question 23, 69 answered that they owned a sole proprietorship and 328 that they owned a family owned Funeral Establishment, with 54 responding that they owned a corporate owned funeral establishment. There are only, 298 licensed funeral establishments, presently and 52 are corporate owned. Two corporate licenses are out that have no present funeral establishment applied for, as yet.

Sincerely,



Victor C. March Sr., Board President



Ruth Ann Arty, Executive Director

Cc: Jennifer B. Chasse, Senior Policy Analyst
Secretary Van T. Mitchell
Nathan T. McCurdy, Policy Analyst
Kathleen P. Kennedy, Policy Analyst