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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/12
 LAST UPDATED 02/11/12

SPONSOR HJC HB CS/64/aHBIC

SHORT TITLE Change Thanatopractice to Funeral Services SB _____

ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
\$120.0*	\$124.5*	\$125.3*	Recurring	Thananopractice Fund

(Parenthesis () Indicate Revenue Decreases)

*See Fiscal Implications for explanation of this data provided by RLD.

Duplicates (but for the HBIC amendment) SB 73

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to the House Judiciary Committee substitute for House Bill 64 1) to clarifies that a direct disposer does not perform or arrange for embalming unless required by the place of disposition; 2) clarifies in the educational requirements for funeral service practitioners and funeral services interns that it is the funeral program of an institution that is to be accredited as required in the substitute; 3) clarifies that each establishment shall have a full-time funeral service practitioner; and 4) replaces one reference to "Thanatopractice Act" with "Funeral Services Act" and corrects a misspelling.

Synopsis of Original Bill

The House Judiciary Committee Substitute for House Bill 64 updates existing law: it changes the name of the Thanatopractice Act to the Funeral Services Act (and makes that same change in other laws referencing the Act), changes the educational requirements for licensure as a funeral service practitioner and direct disposer, discontinues new licensure as an assistant funeral service

practitioner and associate funeral service practitioner, provides for relinquishment of establishment licenses in certain cases, and authorizes the regulating board to issue cease and desist orders.

FISCAL IMPLICATIONS

The RLD reports that the thanatopractice board is self-sustaining. The figures reflected in the table above were provided by RLD, and the FY 13 figures are estimated based on an average of the revenue generated in the last three years. The RLD reports estimated fund balances for FY 12 of \$24,200, for FY 13 of \$21,400 and for FY 14 of \$20,600.

SIGNIFICANT ISSUES

The AGO believes the amendments contained in this bill largely reflect current practices. For example, the bill converts assistant and associate funeral service provider licenses into funeral services intern licenses. The RLD reports these licenses are outdated, while the intern license now fills the needs of the profession. It also notes that only 1 person holds an assistant license and 3 people are licensed as associates. Additionally, the substitute bill also codifies what the AGO advises has been recent practice of having a licensed M.D. from the Office of the Medical Investigator as a board member.

The substitute bill changes the education necessary to be licensed as a funeral service practitioner and as a direct disposer to require an associate's degree in funeral science requiring the completion of sixty hours from an institution accredited by the American Board of Funeral Service Education or any successor institution recognized by the United States government.

The AGO also notes that the substitute bill clarifies that when an establishment no longer employs a full-time licensee in charge, it must cease the practice of funeral service.

The RDL also calls attention to the new language (on page 29) that requires the release of a dead human body whether or not costs have been paid, and requires an establishment to whom a dead human body is transferred to reimburse any previous establishments for all reasonable nonprofessional service charges incurred.

Lastly, in Section 25, the substitute bill gives the board the power to issue cease and desist orders to individuals or establishments believed to be violating this practice act, which violation creates a health risk to the community or a risk to the orderly or prompt disposition of a dead human body and immediate action is deemed necessary, and provides for a hearing within five days after service of a cease and desist order. The AGO reports that granting the board this new power appears to be in response to recent events in which an Albuquerque funeral home was operating without a full-time licensee in charge. However, the AGO raises an issue concerning the process set out in Section 25:

This new material may be problematic as it could potentially circumvent the current disciplinary process set out in the Uniform Licensing Act ("ULA"). The ULA is designed to afford licensees due process before any action can be taken on a license such as suspension, revocation or monetary fines. *See* NMSA 1978, § 61-1-3. Therefore, HB 64 should be refined to establish the criteria the Board needs to demonstrate before issuing a cease and desist order which would

presumably be close to the standards for a preliminary injunction. It should be noted that the Board has the power to seek injunctive relief pursuant to the ULA. NMSA 1978, § 61-1-24.

CONFLICT

The substitute bill conflicts with SB 73, Change Thanatopractice to Funeral Services. SB 73 eliminates licensure as a direct disposer, does not provide for reimbursement of certain fees following transfer of a dead human body from one establishment to another, requires an arrangement room, allows for a common preparation room, and provides for a different hearing procedure concerning cease and desist orders.

TECHNICAL ISSUES

1. On page 5, line 13, “Thananopractice” should be changed to “Funeral Services”.
2. On page 30, line 21, the deletion of “direct disposition” may be inconsistent with the substitute bill’s continuation of licensure as a direct disposer in Section 11, and the continued inclusion in Section 5 (page 5, subsection I) of a definition of “direct disposition” separate and apart from the new definition of “funeral services” (page 7, lines 18-22)

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