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Instructions

Provisions of the New Mexico Sunset Act (12-9-19 NMSA 1978) require the Legislative Finance Committee (LFC) to schedule public hearings to receive testimony and determine if boards and commissions scheduled for sunset should be recommended for extension or be allowed to terminate.

Please complete the following agency self-evaluation report and return it to the LFC. Your department is responsible for demonstrating a public need for continuation of regulatory authority and recommending necessary amendments to enabling statutes that would improve operational efficiency. You may add or remove additional rows in any of the tables or replace the tables with your own charts and information where appropriate. We would appreciate your analysis, recommendation, and completed questionnaires by June 30, 2016. Contact LFC analyst, Sunny Liu, with any questions about this report.

Contact Information:

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I. Agency Contact Information

A. Please fill in the following chart.

Table 1: Key Agency Contacts

Position Title	Name	Address	Telephone & Fax Numbers	Email Address
Director	Enrique Knell	P.O. Box 25101, Santa Fe, NM 87504	505-476-4622	Enrique.knell@state.nm.us
Deputy Director	Kathy Ortiz	P.O. Box 25101, Santa Fe, NM 87504	505-476-4642	Kathy.ortiz1@state.nm.us
Team Leader	Amos Padilla	P.O. Box 25101, Santa Fe, NM 87504	505-476-4622 505-476-4545	Amos.Padilla@state.nm.us
Board Administrator	Vacant	P.O. Box 25101, Santa Fe, NM 87504	505-476-4622 505-476-4545	

II. Key Functions and Performance

A. Provide an overview of your agency’s mission, objectives and key functions.

The mission of the New Mexico State Board of Funeral Services is to regulate the practice of Funeral Services in a manner that ensures public health, safety and welfare and to protect the public from unprofessional, improper, incompetent and unlawful practice. It is necessary to provide laws and regulations to govern the handling and care of the dead and the sensitivities of those who survive, whether or not they wish to have rites or ceremonies.

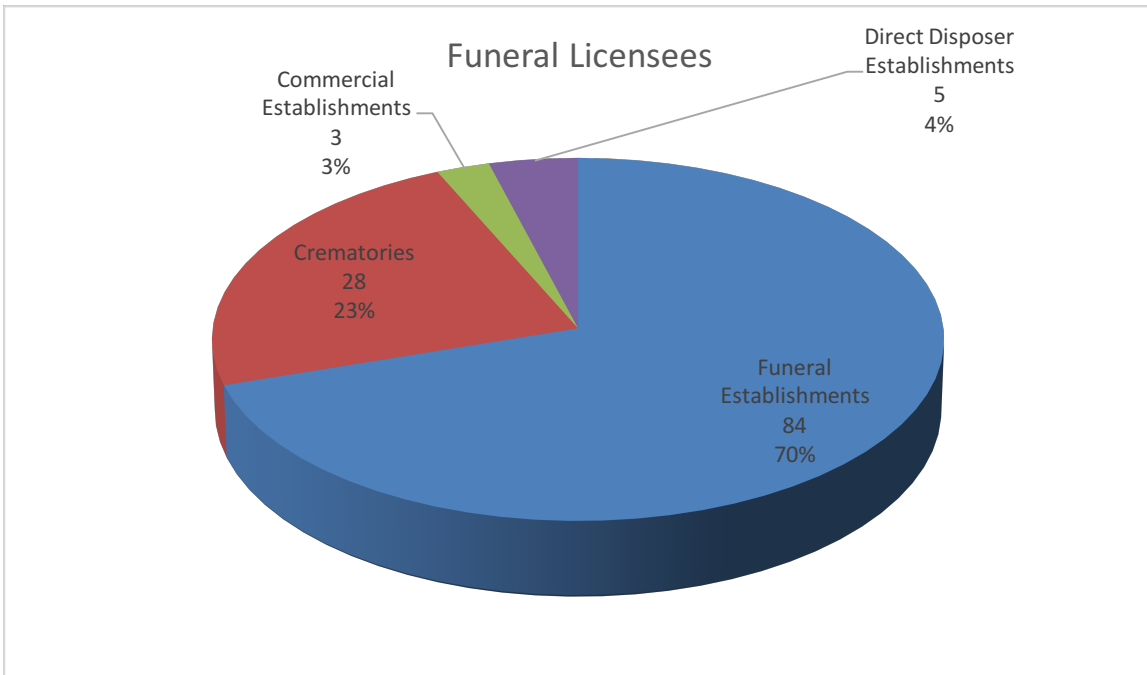
B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?

The function of the Board of Funeral Services is to regulate the practice of the care and disposition of the dead human body and assure that funeral establishments, direct disposition establishments, and crematories maintain prescribed standards. The Board currently has 483 licensed individuals and 120 licensed establishments and crematories. The Board averages approximately 6-7 complaints per year. The New Mexico Board of Funeral Services consists of 6 board members. There are 3 professional members, 2 public members and 1 health care practitioner from the Office of the State Medical Examiner. The purpose of the Board is to provide efficient licensing, compliance, and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice. The Board provides regulation and oversight of an industry which requires high safety standards due to human health concerns, proper and dignified care & handling of dead human bodies, and high ethical standards when dealing with an often vulnerable and grieving customer base. The current laws and regulations continue to uphold a necessary standard of care in an industry that has or will affect every human being at some time both indirectly and directly.

C. Describe who or what this agency affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The Board of Funeral Services affects and licenses four types of establishments:

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Funeral Establishments (16.64.4.9 A. NMAC) - 84 licensed establishments (70%)

To be licensed by the board, each funeral establishment shall have and maintain the following minimum requirements:

- (1) a chapel in which funeral services may be conducted, which shall be at least six hundred (600) square feet (inside-wall-to-inside-wall) in size, and shall:
 - (a) have the capacity for seating not less than sixty (60) persons and for the proper display of a casket containing the deceased;
 - (b) have good ventilation;
 - (c) be entirely and completely separated from both the preparation room and the casket display room, except for entrances and exits having doors; and
- (2) a casket display room which shall be not less than four hundred fifty (450) square feet (inside-wall-to-inside-wall) in size and shall:
 - (a) contain burial caskets or a range of models and prices with not less than twelve different adult burial caskets or models normally displayed, and if models are displayed then the burial caskets shall be available and warehoused within 50 miles of the establishment; and
 - (b) be adequately illuminated; and
 - (c) any rental casket considered for interment or cremation services shall have written disclosure as previously used merchandise; consent form shall be provided and signed by the surviving spouse or next of kin; and
- (3) a preparation room which shall be not less than one hundred fifty (150) square feet (inside-wall-to-inside-wall) in size and shall:
 - (a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;
 - (b) be equipped with necessary drainage, lighting and ventilation;
 - (c) be equipped with the equipment and supplies necessary to embalm and otherwise prepare the human dead for final disposition and transportation; and

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(d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors.

Crematories (16.64.4.8 NMAC) – 28 licensed crematories (23%)

- A. The building in which an establishment or crematory is located shall be in conformity with the requirements of the applicable state and local statutes, rules, ordinances and zoning provisions, of good appearance and devoted primarily to the purpose for which it is licensed; provided, however, that a crematory may be located at any establishment if allowed by local ordinances and zoning provisions.
- B. The site and any rooms or areas within the structure thereon, and the use thereof, shall conform to all applicable state and local statutes, rules, ordinances and zoning provisions, and shall be in clean condition and good repair at all times.
- C. There shall be some identification visible from the street identifying the name of the establishment as licensed by the board; provided, however, that crematories shall not be required to have visible identification.
- D. Within this state there may be presently licensed establishments which were lawful before 16.64 NMAC was effective in its original form on September 14, 1988, but which would not conform to the provisions of 16.64.4 NMAC, or future amendment. It is the intent of 16.64 NMAC to permit these physical structure nonconformities in accordance with the Funeral Services Act. To effectuate this intent, the application of 16.64 NMAC shall be prospective only from and after its effective date in its original form on September, 14, 1988 and any existing physical structure nonconformity in a presently licensed establishment shall not be deemed grounds for revocation, suspension, denial or non-renewal of an establishment license for facilities existing and approved under the statutes and 16.64 NMAC in force at the date of the adoption hereof. Any such establishment whose license is revoked or not renewed, or any establishment which has any change in ownership as outlined in 16.64.4.11 NMAC shall be subject to the requirements of the board at the time such establishment applies to again become licensed. The provisions of 16.64.4 NMAC shall be deemed severable.

Commercial Establishments (16.64.4.9 B. NMAC) – 3 licensed establishments (3%)

To be licensed by the board, each commercial establishment shall have and maintain the following minimum requirements:

- (1) a preparation room as outlined in Paragraph (3) of Subsection A of 16.64.4.9 NMAC; and
- (2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors, and which is totally separate from the preparation room except for entrances and exits having doors; and
- (3) commercial establishments shall be exempt from the requirements of Paragraphs (1) and (2) of Subsection A of 16.64.4.9 NMAC, provided the licensee in charge certifies to the board that the commercial establishment will not exceed the provisions allowed for commercial establishments in the Funeral Services Act.

Direct Disposer Establishments (16.64.4.9 C. NMAC) – 5 licensed establishments (4%)

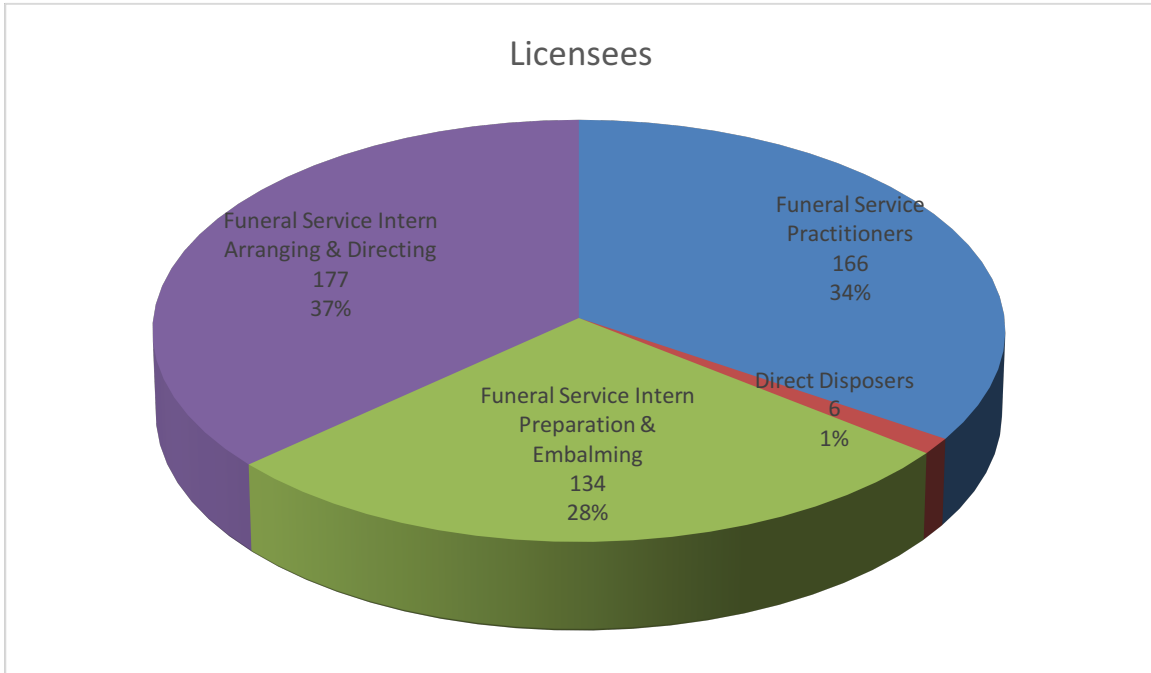
To be licensed by the board, each direct disposition establishment shall have and maintain the following minimum requirements:

- (1) a room for sheltering dead human bodies which shall:
 - (a) be equipped with a sanitary flooring of tile or other suitable hard, impervious surface;
 - (b) be equipped with necessary drainage, lighting and ventilation;
 - (c) have a refrigeration unit thermostatically controlled with a minimum storage area of twelve and one-half (12.5) cubic feet per body;
 - (d) be entirely enclosed by flooring, walls and ceiling, except for proper ventilation and entrances and exits having doors;

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(2) an office which is entirely enclosed by flooring, walls and ceiling, except for proper ventilation and for entrances and exits having doors, and which is totally separate from the room where bodies are sheltered except for entrances and exits having doors; and if the establishment contains burial caskets or a range of models the establishment shall comply with the requirements of Paragraph (2) of Subsection A of 16.64.4.9 NMAC.

The Board of Funeral Services affects and licenses six types of practitioners:



Funeral Service Practitioners (16.64.3.8 C & G NMAC) – 166 licensees (34%)

An applicant applying for a funeral service practitioner license must:

- (1) submit a completed application form supplied by the board office;
- (2) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3) submit satisfactory evidence that the applicant is at least 18 years of age;
- (4) submit satisfactory evidence that the applicant has served as a licensed funeral service intern for not less than twelve (12) months, under the supervision of a licensed funeral service practitioner. During this training period, the applicant shall have assisted in embalming at least fifty (50) bodies, making of at least (50) funeral arrangements, and the directing of at least fifty (50) funerals;
- (5) submit satisfactory evidence that the applicant has obtained an associate’s degree in funeral science requiring the completion of at least sixty (60) semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government;
- (6) submit satisfactory evidence that the applicant has passed the national board examination;
- (7) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;
- (8) an applicant applying based on credentials from another state must:
 - (a) submit a completed application form supplied by the board office;
 - (b) pay applicable fees as set forth in 16.64.2.8 NMAC;
 - (c) submit a verification of licensure and good standing;
 - (d) submit proof of five (5) continuous years of experience/employment as a funeral

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service practitioner;

- (e) submit satisfactory evidence that the applicant has passed the national board examination;
- (f) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

G. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

- (1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and
- (2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

Direct Disposers (16.64.3.8 B & G NMAC) – 6 licensees (1%)

B. An applicant applying for a direct disposer license in the state of New Mexico must:

- (1) submit a completed application form supplied by the board office;
- (2) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3) submit satisfactory evidence that the applicant is at least 18 years of age;
- (4) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC;
- (5) submit satisfactory evidence that the applicant has obtained an associate's degree in funeral science requiring the completion of at least sixty (60) semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

G. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of

- (1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and
- (2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

Funeral service intern licenses are separated into two categories, Direct and General. Direct licensees are supervised closely until they have assisted in making arrangements for fifty (50) funerals and assisted in directing fifty (50) funerals under direct supervision, and/or assisted in embalming fifty (50) bodies under direct supervision. After such experience has been obtained a licensee may apply for approval to perform funeral service intern functions under general supervision.

Funeral Service Intern (16.64.3.8 A & G NMAC) - Direct – Preparation & Embalming– 50 licensees (11%)

A. An applicant applying for a funeral service intern license must:

- (1) submit a completed application form supplied by the board office;
- (2) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3) submit satisfactory evidence that the applicant is at least 18 years of age;

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- (4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;
- (5) submit satisfactory proof of employment and proof of supervision;
- (6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

G. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

- (1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and
- (2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

Funeral Service Intern (16.64.3.8 A, G & F NMAC) – General – Preparation & Embalming– 84 licensees (17%)

A. An applicant applying for a funeral service intern license must:

- (1) submit a completed application form supplied by the board office;
- (2) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3) submit satisfactory evidence that the applicant is at least 18 years of age;
- (4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;
- (5) submit satisfactory proof of employment and proof of supervision;
- (6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

G. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

- (1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and
- (2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

F. A funeral service intern shall practice funeral service only under the supervision of a funeral service practitioner, provided:

- (1) when a funeral service intern has assisted in embalming of fifty (50) bodies under direct supervision, he or she may request approval from the board to embalm under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees; and

Funeral Service Intern (16.64.3.8 A & G NMAC) - Direct – Arranging & Directing – 61 licensees (13%)

A. An applicant applying for a funeral service intern license must:

- (1) submit a completed application form supplied by the board office;
- (2) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3) submit satisfactory evidence that the applicant is at least 18 years of age;

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- (4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;
- (5) submit satisfactory proof of employment and proof of supervision;
- (6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

G. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

- (1) funeral service practitioner applicants who have graduated from an accredited school of funeral service education within five (5) years prior to application; and
- (2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

Funeral Service Intern (16.64.3.8 A, G, & F NMAC) - General – Arranging & Directing – 116 licensees (24%)

A. An applicant applying for a funeral service intern license must:

- (1) submit a completed application form supplied by the board office;
- (2) pay applicable fees as set forth in 16.64.2.8 NMAC;
- (3) submit satisfactory evidence that the applicant is at least 18 years of age;
- (4) submit satisfactory evidence that the applicant has graduated from high school or the equivalent;
- (5) submit satisfactory proof of employment and proof of supervision;
- (6) successfully complete the jurisprudence examination outlined in Subsection B of 16.64.5.9 NMAC.

G. Applicants for licensure shall be required to provide evidence satisfactory to the board of completion of a course or other training approved by the board concerning contagious and infectious diseases, with the exception of:

- (2) funeral service intern applicants who are applying under general supervision, provided that the funeral service intern previously met the requirement of Subsection F of 16.64.3.8 NMAC at the time of application for funeral service intern licensure under direct supervision, and provided that the funeral service intern has actively maintained a license under direct supervision for no more than five (5) years.

F. A funeral service intern shall practice funeral service only under the supervision of a funeral service practitioner, provided:

- (1) when a funeral service intern has made arrangements for fifty (50) funerals under direct supervision, he or she may request approval from the board to make arrangements under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (3) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required; and
- (3) when a funeral service intern has assisted in the directing of fifty (50) funerals, committal services, grave side services or memorial services under direct supervision, he or she may request approval from the board to direct such services under general supervision; the request shall be made on an application form prescribed by the board, accompanied by the required fees, provided that if the fees were previously paid for a request in accordance with Paragraph (1) of Subsection F of 16.64.8.8 NMAC, the fees shall not be required.

D. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?

The Boards and Commissions Division monitors performance measures (see table 2) for the Funeral Services Board. The purpose of the performance measures is to ensure the efficiency and effectiveness of the Board's staff and timely completion of procedural requirements for tasks such as processing applications, logging complaints, complying with the Open Meetings Act, and conducting compliance inspections. These measures can be used to ensure both the public and the industry are receiving quality customer service.

E. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?

Yes, the Board of Funeral Services enabling law continues to correctly reflect the mission, objectives, and approach to performing its functions.

In 2012 the Board requested legislative alterations and the following changes were adopted:

- Eliminated the word "Thanatopractice" and replaced it with "Funeral Services".
- Remove three license types; direct disposers, associate FSP's, and Assistant FSP's.
- Grandfathered existing direct disposer licenses until they retire or expire, however, the board will not grant new licenses.
- 61-32-9 (6) updated language to specify that sixty semester hours must be completed at an institution whose funeral program is accredited by the American Board of Funeral Service Education or any other successor institution offering funeral service education recognized by the United States Government.

F. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies? If applicable, briefly discuss any memorandums of understanding, interagency agreements, or interagency contracts.

To a certain extent, the practice of funeral, direct disposition, and cremation services overlap with cemetery practices. In New Mexico, cemeteries are unregulated.

Some cemetery owners require that families make burial arrangements directly with the cemetery owner and not through the funeral establishment. Families have expressed that an additional burden is placed on them at their time of grief, and they have expressed that they should be allowed to make burial arrangements with the contracted funeral establishment, therefore only having to deal with one entity.

Since cemeteries are unregulated, persons wishing to lodge a complaint are referred to the Attorney General's Office, and on occasion to RLD's Financial Institution Division, when dealing with Perpetual Care Cemeteries. Funeral establishments help families by informing them what exactly they need to do in arranging a burial at a cemetery.

There is also some overlap with the Occupational Safety and Health Administration (OSHA) in overseeing and maintaining the OSHA safety standards. The Funeral Services Board has inspectors that ensure establishments are complying with licensing, safety, and sanitation requirements. OSHA also has

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inspectors that ensure compliance with state and federal standards. The Funeral Service Board's inspectors conduct an inspection every 12-16 months.

G. In general, how do other states carry out similar functions?

Every state has a funeral service board, or an equivalent, with requirements for licensure and safety standards. Most states regulate the profession via an agency that oversees professional licensing, but some states' funeral industry is regulated by the health department.

H. What key obstacles impair your agency's ability to achieve its objectives?

Two obstacles have been identified:

- Issues regarding unlicensed activity of "virtual" funeral providers offering services through the Internet without proper licensure;
- Changes in technology, such the Internet, and its impact on the industry in relation to outreach across multiple jurisdictions and advertising accessibility to the general public.

I. Discuss any changes that could impact your agency's key functions in the near future (e.g., changes in federal law or outstanding court cases).

The Board of Funeral Services does not anticipate any changes preventing it from achieving key functions. A new challenge regarding unregulated activity is "virtual" funeral providers. They typically establish a network of "contracted" providers who are local and may or may not be licensed. These groups are Internet-based and generate leads, via search engines, like Google or Bing under headings of low-cost cremations. They essentially subcontract funeral services without being licensed to do so in New Mexico. Unlicensed activity is pursued via the complaint process and the Board can issue a Cease & Desist Order or file an injunction in District Court with a \$1,000.00 fine. It can be increasingly difficult to deter unlicensed activities when information is disseminated on the World Wide Web and, often times, across state lines where the New Mexico Board of Funeral Services does not have jurisdiction.

J. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:

- why the regulation is needed;

The Board provides regulation and oversight of an industry requiring high safety standards due to human health concerns, proper and dignified care & handling of dead human bodies, and high ethical standards when dealing with an often vulnerable and grieving customer base. The existence of the Board is necessary to continue to protect the public.

- initial and continuing requirements for licensure, registration, or certificate applicants;

Funeral Service Practitioners must have obtained an associate's degree in funeral science requiring the completion of at least sixty (60) semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government; they must complete ten (10) hours of continuing education units at the time of yearly license renewal.

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Funeral Service Interns under general supervision must complete ten (10) hours of continuing education units at the time of yearly license renewal.

Direct Disposers must complete ten (10) hours of continuing education units at the time of yearly license renewal.

“Continuing education” means the education which is obtained by a licensee to develop, maintain, improve or expand skills and knowledge. This education may be obtained through formal or informal education processes, school study, research and participation in professional, technical and occupational societies and by other similar means as authorized by the Board.

- the scope of, and procedures for, inspections or audits of regulated entities;

Please see Attachments A-1 through A-4 (Establishment Inspection Forms).

A-1 – Funeral Establishment Inspection Form

A-2 – Crematory Inspection Form

A-3 – Commercial Establishment Inspection Form

A-4 – Direct Disposition Establishment Inspection Form

- follow-up activities conducted when non-compliance is identified;

If an establishment is found to be non-compliant the Board will impose a \$300.00 fine due within thirty days. The establishment is allowed thirty days to correct issues, then another inspection is conducted. If the establishment is found to be non-compliant during the second consecutive inspection, another fine of \$500.00 is imposed (plus any expenses incurred such as per diem, travel, etc.). The establishment is allowed another thirty days to correct the issue. If the establishment is found to be non-compliant a third time, a complaint is filed with the Board and action pursued as the Board deems necessary.

- sanctions available to the agency to ensure compliance;

The Uniform Licensing Act (61-1-3 NMSA 1978) gives the Board the authority to take the following action after every licensee or applicant is afforded notice and an opportunity to be heard:

- Deny permission to take an examination for licensing for which application has been properly made as required by board rule;
- Deny a license after examination for any cause other than failure to pass an examination;
- Deny a license for which application has been properly made as required by board rule on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification;
- Withhold the renewal of a license for any cause other than:
 - failure to pay the required renewal fee;
 - failure to meet continuing education requirements; or
 - issuance of a temporary license extension if authorized by statute.

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- Suspend of a license;
 - Revoke of a license;
 - Place restrictions or limitations on the scope of a practice;
 - Require a licensee or applicant to complete a program of remedial education or treatment;
 - Require monitoring of a licensee's practice by a supervisor approved by the board;
 - Censure or reprimand of the licensee or applicant;
 - Require conditions of probation or suspension for a specific period of time;
 - Require payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;
 - Place licensee on a corrective action, as specified by the board; or
 - Require a licensee to issue a refund to the consumer of fees that were billed to the consumer of fees that were billed to and collected from the consumer by the licensee.
- the number and types of complaints received for the past three fiscal years;

A listing of complaints received by the Funeral Services Board for fiscal years 2014, 2015 and 2016 is attached as **Attachment B**.

- procedures for handling consumer/public complaints against regulated entities; and
The following complaint procedures are used for the Funeral Services Board:
 - Complaints must be submitted to the Board Office on a notarized Complaint Form. They are logged and processed within three days of receipt.
 - An acknowledgement letter is sent to the complainant.
 - A letter is sent to respondent with a copy of the complaint and a request for response.
 - The Compliance Liaison will determine what, if any additional investigation is warranted.
 - The Complaint is presented to the Board's Complaint Committee at their next meeting, usually about two to four weeks prior to the next full Board Meeting.
 - The Complaint Committee reviews the complaint, response, and any additional documentation or evidence available.
 - The Committee will determine whether they have enough information to make a recommendation to the Board.
 - The Committee will determine whether to recommend dismissal or to pursue further action.
 - If the Committee determines violations occurred they will identify and cite specific violations of the Board's Statutes and/or Rules; what action or behavior caused/resulted in the violations; and what disciplinary action, if any, would be appropriate to take against the respondent.
 - The Complaint Committee's recommendation is referred to the Board at their next scheduled Board Meeting and discussed in executive/closed session. The Board will:
 - Deliberate on the information presented and determine how to proceed:
 - dismiss due to no violations of the Board's Statutes and/or Rules, lack of jurisdiction, insufficient evidence to prove violations, etc.;
 - table for additional information; or
 - refer to the Attorney General's Office for the issuance of a Notice of Contemplated Action (NCA) with, or without, proposed early resolution.
 - When the Board returns to open session, they will make motions and vote on the actions discussed in executive/closed session. Complaint Committee members

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abstain or recuse themselves from voting on action to avoid the appearance of any bias.

- Following the Board Meeting, the Compliance Liaison will complete the Board's directives which may include requesting additional information or documentation, referring to an investigator for investigation, sending closure letters to the complainant and respondent, and preparing a request/referral to the Attorney General's Office (AGO) – Litigation Division for the issuance of a Notice of Contemplated Action (NCA).
 - The AGO will determine whether they will prosecute or decline to prosecute the matter. They may also decide to propose an early resolution to the respondent without the need to issue a NCA or proceed to a formal hearing.
 - If the matter does not result in an early resolution, the AGO may proceed with the issuance of a NCA and the respondent will be afforded an opportunity to request a hearing.
 - After the NCA is issued the AGO will prosecute the matter at a formal hearing before a Hearing Officer appointed by the Board, and in accordance with the ULA.
 - The AGO may resolve the matter through a settlement agreement; or
 - The matter will be referred to the Board for the issuance of a Default Order if respondent does not request a hearing.
 - If the matter is resolved through a settlement agreement, the Board will review and consider the allegations and proposed resolution. The Board may:
 - vote to accept the proposal, offer a counter proposal; or
 - decline the proposal and refer to a formal hearing.
 - If the matter goes through a formal hearing, the matter will be referred to the Board for deliberation within ninety (90) days after the hearing has concluded to consider:
 - the Hearing Officer's Findings of Fact and Conclusions;
 - the evidence and testimony presented at the hearing;
 - the appropriate disciplinary action for the violations identified, if any.
 - The Board will vote issue a Decision and Order through their Open Government Attorney and Compliance Liaison.
 - If the matter is referred to the Board for the issuance of a Default Order, the Board will:
 - consider the allegations, violations, evidence and severity of the matter;
 - determine the appropriate action to impose on the respondent; and
 - issue a Default Order through their Open Government Attorney and Compliance Liaison.
 - The Compliance Liaison will monitor and assure compliance with all Board orders (Settlement Agreement, Decision and Order or Default Order).
-
- issues surrounding enforcement of unregulated activity, if applicable.

A new challenge regarding unregulated activity is "virtual" funeral providers. They typically establish a network of "contracted" providers who are local and may or may not be licensed. These groups are Internet-based and generate leads, via search engines, like Google or Bing under headings of low-cost cremations. They essentially subcontract funeral services without being licensed to do so in New Mexico. Unlicensed activity is pursued via the complaint process in which the Board can issue a Cease & Desist Order or file an injunction in District Court with a \$1,000.00 fine.

The Board's Rules and Regulations protect the public from unprofessional and unethical practice by licensed practitioners and those attempting to practice without a license. Pursuant to the Uniform Licensing Act, 61-1-3.2 NMSA 1978, A. A person who is not licensed to engage in a profession or occupation

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regulated by a board is subject to disciplinary proceedings by the board; and B. A board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in a profession or occupation regulated by the board. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.

If the Board is made aware of unlicensed activity, an investigation will be conducted. And if enough evidence is gathered to substantiate the allegations, the Board will proceed with issuing a Notice of Contemplated Action and pursuing the imposition of a civil penalty and restitution for investigative costs and the cost of conducting a hearing.

The Board relies heavily on the public to inform them of unlicensed activity. Thus by design, the Board is reactive and not proactive. The Board has limited authority when it comes to taking preventative measures against violations of the Act or Rules and any unlicensed activity.

A concern with enforcement of unlicensed activity is that the penalty is not severe enough to act as a deterrent. Also, it can be difficult to investigate and/or verify information because the name and contact information of an unlicensed individual is usually inaccurate and/or they change their name and address. The individuals do not respond to inquiries, and the Board does not have authority to require them to cooperate with the Board’s investigation. In addition, it is difficult for any of RLD’s Boards to enforce orders issued to individuals for unlicensed activity.

Furthermore, pursuant to 61-32-30 NMSA 1978, any person who violates any provision of the Funeral Services Act is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment of less than one year, or both. The Board only has administrative authority; therefore, a criminal court is the appropriate jurisdiction to find an individual guilty of a misdemeanor and impose imprisonment. These matters get referred to local law enforcement authorities, Office of the Attorney General or the Office of the District Attorney. However, they are considered a lower priority and are rarely if ever prosecuted.

K. What are your agency’s biggest opportunities for improvement in the future? Are these included in your agency’s strategic plan?

The following topics have been identified in the Strategic Plan:

- Upgrade the current licensing system to accept initial applications online.
- Develop ways to communicate faster and more efficiently with all licensees.
- Assess licensing fees and implement changes, if necessary.
- Implement specialized training for Ebola and other highly infectious diseases for the safe handling of dead human bodies.

L. In the following chart, provide information regarding your agency’s key performance measures including outcome, input, efficiency, and explanatory measures.

Table 2: Key Performance Measures

No.	Performance Measure	FY15 Actual	FY16 Actual	FY16 Target	FY17 Target
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1	Percent of phone calls and emails returned within twenty-four hours and respond to written correspondence within three days of receipt.	100%	95%	93%	N/A
2	Percentage of Funeral establishments and crematories inspected once every eighteen months.	91%	100%	100%	N/A
3	Percent of initial applications and renewals processed within three days of receipt of completed application.	100%	100%	100%	99%
4	Percent of complaints logged and processed within three days of receipt of written complaint, then investigated and presented at next board compliance meeting or no later than four months from receipt of complaint.	N/A	N/A	N/A	99%
5	Percent of board meeting agendas available to the public posted to the website at least seventy-two hours prior to the meeting, and draft minutes shall be prepared and posted to the website within ten working days after the meeting.	N/A	N/A	N/A	99%
6	Percent of barber and cosmetology establishments, body art establishments, funeral service establishments, and pharmacy establishments inspected once every sixteen months.	N/A	N/A	N/A	99%

M. If applicable, explain why certain targets for key performance measures were not met.

All performance measures in Fiscal Year 2015 were met. We expect to meet performance measures for FY16.

N. Provide a timeline of your agency's history and key events, including:

- the date your agency was established;

The Board of Funeral Services was created by state statute 61-32-5 in 1993.

- the original purpose and responsibilities of your agency;

The original purpose of the agency was, in the interest of public health, safety and welfare, to protect the public from the unprofessional, improper, incompetent and unlawful practice of the care and disposition of the dead human body. It was also necessary to provide laws and regulation to govern the handling and care of the dead and the sensitivities of those who survive, whether they wish or do not wish rites or ceremonies. The primary responsibility of the Board is to protect the public.

- major changes in responsibilities or statutory authority;

None.

- changes to your policymaking body's name or composition;

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In 2012 the name of the Board was changed from the Thanatopractice Board to the Funeral Services Board.

- significant changes in state/federal legislation, attorney general opinions, or funding;

None.

- significant state/federal litigation that specifically affects your agency’s operations; and

None.

- key changes in your agency’s organization (e.g., a major reorganization of the agency’s divisions or program areas).

None.

Table 3: Agency History and Major Events

Year	Major Event
	See Attachment C

III. Policymaking Structure

A. Complete the following chart providing information on your policymaking body members.

Table 4: Policymaking Body

Member Name	Term/Appointment Dates/Appointed by (e.g., Governor, Lt. Governor, Speaker)	Qualification (e.g., public member, industry representative)	City
David Houston	01/08/2013 - Governor’s Office	Professional Member	Artesia
Paul Baca	09/28/2015 – Governor’s Office	Professional Member	Silver City
Sam Baca	11/12/2015 – Governor’s Office	Professional Member	Deming
Vacant	n/a	Public Member	n/a
Vacant	n/a	Professional Member	n/a
Ann Swanson	05/23/2016 – Governor’s Office	Public Member	Truth or Consequences

B. Describe the primary role and responsibilities of your policymaking body.

Statute 61-32-6. Board powers. (Repealed effective July 1, 2018) explicitly describes the roles and responsibilities of the policy making body:

A. In addition to any other authority provided by law, the board has the power to:

- (1) adopt, in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules necessary to carry out the provisions of the Funeral Services Act;
- (2) adopt rules implementing continuing education requirements;

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- (3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions pursuant to Section 61-1-3 NMSA 1978;
- (4) establish reasonable fees to carry out the provisions of the Funeral Services Act;
- (5) provide for investigations necessary to determine violations of the Funeral Services Act;
- (6) establish committees as the board deems necessary for carrying out the provisions of the Funeral Services Act;
- (7) apply for injunctive relief to enforce the provisions of the Funeral Services Act or to restrain any violation of that act;
- (8) impose a fine not to exceed five thousand dollars (\$5,000) for each violation, in addition to other administrative or disciplinary costs, and all fines shall be deposited in the funeral services fund; and
- (9) conduct criminal background checks on applicants for licensure.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended performance of any power or duty granted under the Funeral Services Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

61-32-7. Board duties. (Repealed effective July 1, 2018.)

The board shall:

- A. administer the provisions of the Funeral Services Act;
- B. provide for the examination, licensing and renewal of applicants or licensees; and
- C. provide for the inspection of establishments and crematories.

C. How is the chair selected?

The chair is selected by a vote of the Board in an open meeting at the first Board meeting of the calendar year.

D. Please list all vacant positions and the date of vacancy.

The Board currently has one vacancy for a professional member (direct disposer or employee of the Office of the Medical Investigator).

E. List any special circumstances or unique features about your policymaking body or its responsibilities. State if there are any specific requirements for public or professional members.

Three members shall be funeral service practitioners who have been licensed in this state for at least five years; two members shall represent the public and shall not have been licensed for the practice of funeral service or direct disposition in this state or any other jurisdiction and shall not ever have had any financial interest, direct or indirect, in any funeral, commercial or direct disposition establishment or crematory; and one member shall be a licensed direct disposer or health care practitioner from the office of the state medical investigator who has been licensed in this state for at least five years.

F. In general, how often does your policymaking body meet? How many times did it meet in the current fiscal year? How many times did it meet in the previous fiscal year?

In general the Board of Funeral Services meets twice per fiscal year. In FY16 the Board met once. In FY15 the Board met twice.

G. What type of training do members of your agency's policymaking body receive?

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All new board appointees, both public and professional, receive a Board Member Training manual that contains information on the duties and responsibilities of the Board, with a separate section on the role of public members. The manual contains the Board’s statutes, rules and regulations, the Open Meetings Resolution and the Open Meetings Act, the Uniform Licensing Act, the Mileage and Per Diem Act and other laws pertinent to licensing, regulation, and board operation.

Board members get national training from recognized providers such as Council on Licensure Enforcement and Regulation (CLEAR) and Federation of Associations of Regulatory Board (FARB).

The Board’s Assistant Attorney General trains individual members and continually works with the Board to assist them with all matters pertaining to the disciplinary process, board operations and any other issues that may arise.

The Boards and Commission Division is developing additional training for all board members.

H. Does your agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, describe these policies.

The Board and staff is able to utilize the Administrative Procedures Guide, Uniform Licensing Act, and Open Meetings Act to guide the Board and the staff in the proper procedure for carrying out board functions and duties legally and ethically.

I. What information is regularly presented to your policymaking body to keep them informed of your agency’s performance?

At each board meeting, the Board is presented with a report containing information about board membership, issues pending and topics that can affect the Board, statute or rule changes wanted by the Board, numbers of active licensees, numbers of licenses issued since the last meeting, and information about disciplinary actions.

J. How does your policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of your agency?

The Board intakes information from the public in several ways. Each meeting allows for public comment at which time members of the public may address the Board directly with concerns. More in-depth presentations can be made in front of the Board by requesting to be placed on the board meeting agenda. The public may also contact the Board Office with any concerns via mail, email, or telephone. Concerns from the public can be routed to the most appropriate location (i.e. compliance section will address complaints, general comments or suggestions may be reviewed by the board administrator, technical questions may be forwarded to the Board Chair, etc.). The input from the public is constantly incorporated into the operation of the Board and addressed with the greatest level of care and concern.

K. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart.

Table 5: Subcommittees and Advisory Committees

Name of Subcommittee or Advisory Committee	Size/Composition/How are members appointed?	Purpose/Duties	Legal Basis for Committee
Application Committee	2 Board Members by vote	Review applications prior to issuance of an initial license and make	61-32-7 B; 61-32-6 A (6)

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		recommendations to the Board.	
Complaint Committee	2 Board Members by vote	Review complaints from the public and/or industry and make recommendations to the Board.	61-32-6 A (5)(6)
Rules Committee	2 Board Members by vote	Create, update, and prepare rules for Board review and recommend new rules to stay abreast of industry changes.	61-32-6 A (1)(6)

IV. Funding

A. Provide a brief description of your agency’s funding.

The Board of Funeral Services funding is from “other state funds”. This board does not receive any general funds.

The Board is self-supported by revenues collected from application, licensure, renewal, administrative, miscellaneous, and penalty fees. Historically, the Board has established fees to provide sufficient revenues to meet operational requirements and to maintain at least one year’s operating budget in the Board’s cash fund. The number of projected new licenses issued is used to analyze budgetary needs. Then the number of renewals anticipated is used to calculate the remainder of the projected budgetary needs.

B. Please fill in the following chart.

Table 6: Agency Budget Summary (dollars in thousands)

Category	FY15 Actual	FY16 Actual	FY17 Budget	FY18 Projected
SOURCES				
General Fund Transfers				
Other Transfers				
Other Revenues	142.4	91.3	119.8	119.8
Fund Balance	0.0	33.1	31.5	31.5
SOURCES TOTAL	142.4	124.4	151.3	151.3
USES				
Personal Services and Employee Benefits	75.9			
Contractual Services	3.2	3.0	5.7	5.7
Other Costs	13.2	7.8	24.5	24.5
Other Financing Sources (overhead)	19.8	113.6	121.1	121.1
TOTAL USES	112.1	124.4	151.3	151.3
FTE				
Permanent	1.30	1.30	1.30	1.30
Term				
Temporary				
TOTAL FTE POSITIONS	1.30	1.30	1.30	1.30

C. If you receive funds from multiple federal programs, show the types of federal funding sources.

Table 8: Federal Funds/Other Grants

Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
N/A				
TOTAL				

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D. If applicable, provide detailed information on fees collected by your agency.

Table 9: Fee Revenue

Fee Description/ Program/ Statutory Citation	Current Fee/ Statutory Maximum	Number of Persons or Entities Paying Fee	Fee Revenue	Where Fee Revenue is Deposited (i.e., Fund Name)
<u>See Attachment D</u>				

E. If fees are set by your agency, provide detailed information on how fees are determined. Include a description of any proposed changes to agency fee and revenue structure.

The agency will conduct a fee analysis to determine if a reduction or increase in fees is needed.

F. If contracted expenditures are made through this program, please provide:

- a short summary of the general purpose of the contracts;

Post Mortem Training Contract - Provide training on preventing the spread of highly contagious diseases, such as Ebola, to ensure the public safety.

- the expenditure amount for the latest fiscal year;

\$2,950.00

- the number of contracts accounting for those expenditures;

1 contract

- top five contracts by dollar amount, including contractor and purpose;

\$2,950.00 Funeral Home Consultants, LLC. Provide training to prevent the spread of highly contagious diseases.

- the methods used to ensure accountability for funding and performance; and

The board will determine if the training was useful in preventing the spread of highly contagious diseases.

- a short description of any current contracting problems.

None at this time.

G. If applicable, provide a projection of ending cash balances for the latest fiscal year. If cash balances represent more than 5 percent of recurring appropriations, state reasons for this condition and any planned uses for remaining cash balances.

The projected current fund balance as of June 30, 2016 is \$144,926. During the 2016 legislature \$204,900.00 was reverted to the General Fund.

The Board has established fees to provide sufficient revenues to meet operational requirements and to maintain at least one year's operating budget in the Board's cash fund.

V. Organization

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- A. Provide an organizational chart that includes major programs and divisions, showing the number of FTE in each program or division. Details should include, if possible, department heads with subordinates and actual FTE with budgeted FTE. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. Indicate how field or regional offices are used, if applicable.

ATTACHMENT E

- B. Please fill in the following chart.

Table 10: Agency FTE and Vacancies

	FY15 Actual	FY16 Actual	FY17 Budget	FY18 Projected
Budgeted FTE Positions	1.3	1.3	1.3	1.3
Number of Actual FTE as of June 30	1.3	1.3	1.3	1.3
Annual Vacancy Savings (in dollars)				

- C. If applicable, fill in the chart below listing field or regional offices.

RLD Boards & Commissions has no field or regional offices.

- D. List each of your agency's key programs or functions, along with expenditures and FTE by program.

Table 12: List of Program FTE and Expenditures

Key Function/Strategy	Number of Budgeted FTE (latest fiscal year)	Number of Actual FTE as of June 1 (latest fiscal year)	Actual Expenditures
STAFF/Team Leader: Provide decision making authority for multiple administrators and provide team direction to a staff with direct oversight of mandatory requirements, rule and regulations, budget management. Manage resources including finances, staff and equipment. Provide guidance and advice for leadership decisions. Provide administrative oversight and direction to assure efficient board operations for multiple boards and quality customer service for the division.			
BUS OPS SPEC-A/Board Administrator: Manage all activities for multiple boards. Provide efficient licensing, compliance, and regulatory services, to protect the public by ensuring that licensed professional are qualified to practice. The Board Administrator position provides administrative, fiscal, licensing examination and disciplinary oversight and direction to assure efficient board operations for multiple boards and quality customer service.			
BUS OPS SPEC-O/Licensing Specialist: Provide efficient licensing, compliance, and regulatory services, to protect the public by ensuring that licensed professional are qualified to practice. This licensing specialist position provides efficient administrative support for multiple boards and quality customer service. Open & distribute mail; Assist customers on the phone and in person; prepare & review initial licensing files; prepare and process renewals; generate listing and labels; process all forms of negotiable funds; responsible for filing,			

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archiving preparing correspondence; monitor and maintain the inventory supply.			
LINE II/Executive Director: To direct and manage all activities (fiscal, licensing, examination and disciplinary function) pertaining to the administration of the assigned boards which is designed to regulate licensing and practice as directed by the Board rules and regulations to ensure licensee and public safety.			
Legal, Sup Wkr, A0-A/Inspector: Inspection of Board licensed establishments throughout the State. To provide written recommendations to the Program Manager and Compliance Committee regarding procedures in place and existing rules governing the compliance of several licensing Boards.			
Compliance Officer, Sup/Lead Inspector: Provide supervision for a team of inspectors who are responsible for conducting inspections and investigations for several board licensed establishments and regulated industries throughout the State. The supervisor will ensure establishments are in compliance with safety, sanitation and license requirements.			
TOTAL	1.55	1.74	\$57, 623.24

VI. Major Issues

The purpose of this section is to briefly describe any potential issues raised by your agency, the Legislature, or stakeholders that Sunset could help address through changes in statute to improve your agency's operations and service delivery. Inclusion of an issue does not indicate support, or opposition, for the issue. Instead, this section is intended to give the Sunset Review committee a basic understanding of the issues so staff can collect more information during our detailed research on your agency.

Some questions to ask in preparing this section may include: (1) How can your agency do a better job in meeting the needs of customers or in achieving agency goals? (2) What barriers exist that limit your agency's ability to get the job done? Emphasis should be given to issues appropriate for resolution through changes in state law. Issues related to funding or actions by other governmental entities (federal, local, quasigovernmental, etc.) may be included, but the Sunset Review committee has no authority in the appropriations process or with other units of government. If these types of issues are included, the focus should be on solutions which can be enacted in state law. This section contains the following three components.

A. Brief Description of Issue

The last major Ebola outbreak in Africa in 2014 raised concerns about the possibility of highly infectious diseases being contracted within the borders of the United States of America. Such diseases will require specialized training to further prevent the spread of infection to the public. This also helped raise awareness that other infectious diseases in deceased bodies can also present a threat to the public if not properly treated during the preparation of the dead human body for burial.

B. Discussion. Include enough information to give context for the issue. Information helpful in building context includes:

- What specific problems or concerns are involved in this issue?

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The major concern is preventing the spread of highly contagious diseases, such as Ebola, to ensure the public safety.

- Who does this issue affect?

This issue affects the entire population in New Mexico.

- What is the agency's role related to the issue?

The Board's role is to help spread information and training to the industry, regarding the proper handling and preparation procedures for dead human remains infected with highly contagious diseases.

- Mention any previous legislative action related to the issue.

There has not been any previous legislative action related to Ebola.

C. Possible Solutions and Impact. Provide potential recommendations to solve the problem. Feel free to add a more detailed discussion of each proposed solution, including:

- How will the proposed solution fix the problem or issue?

The proposed solution is to assist with the provision training for the funeral services industry to prepare for the proper handling and disposition of dead human bodies infected with highly contagious diseases. This will help to reduce or eliminate the potential spread of infectious diseases.

- How will the proposed change impact any entities or interest groups?

The proposed change will positively impact all entities as well as the general public by providing necessary information for the preparation and disposition of dead human remains infected with contagious diseases.

- How will your agency's performance be impacted by the proposed change?

The training for handling of bodies infected with Ebola and other infectious diseases will require a contract with a training provider. The Board will be impacted financially by paying for contractual services for training. However, the Board, the industry, and the public will benefit enormously by preventing the spread of highly infectious diseases and knowing the proper steps to reduce and eliminate the potential for a large-scale outbreak.

- What are the benefits and possible drawbacks of the recommended change?

The benefits of the change are immeasurable. Society cannot afford to be placed at risk for a large scale outbreak of a highly infectious disease. Such an outbreak could threaten the public and society as we know it. The Board cannot afford to take the risk of exposing an industry member or the public to an epidemic. The cost of providing the industry with much needed information and training is minor compared to the potential consequence of not doing such.

- What is the fiscal impact of the proposed change?

The provision of training will cost the Board \$2,950.00 for Fiscal Year 2016. The evaluation of the success of the training may lead to additional training provided in Fiscal Year 2017.

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Complete this section for **each** issue. Copy and paste components A through C as many times as needed to discuss each issue.

VII. Other Contacts

A. Fill in the following chart with updated information on individuals or groups with an interest in your agency.

Table 15: Other Contacts

Group or Association Name/ Contact Person	Physical Address	Telephone Number	Email Address

VIII. Agency Comments

Provide any information needed to gain a preliminary understanding of your agency.