

# OREGON DEATH CARE: BOARD OF MORTUARIES & CEMETERIES

*Regulating Death Care Facilities & Practitioners In Oregon.*

2/17/2015

HB5023 Testimony: FY15-17 Budget Request

Joint Ways & Means: Education Sub Committee

Oregon 2015 Legislature

# Oregon Death Care: Board of Mortuaries & Cemeteries

## HB5023 TESTIMONY: FY15-17 BUDGET REQUEST

### Mission, Goals & Historical Perspective

#### Mission

As a health professional regulatory board, the Board shares the **common mission to protect public health, safety & welfare**. It is the Board's statutory responsibility to license and regulate the practice of individuals and facilities engaged in funerary services as well as the care, preparation, processing, transportation and final disposition of human remains. The Board's programs protect public health, safety and welfare by promoting professional behavior and enforcing compliance with civil statutes and rules established for that purpose, as well as through education and public awareness.

#### Long-Term Outcomes: Common State Outcomes (from Oregon Safety Outcome)

- ⊃ **Citizens are knowledgeable about the consumer protection services that are offered by the state and are able to efficiently access and utilize these services to their benefit.**
- ⊃ **Oversight of financial services, utilities, telecommunications providers and the insurance industry develops to provide affordable products and services where penalties and fees are limited and transparent.**
- ⊃ **Improved effectiveness of adult abuse protection and response.**
- ⊃ **Regulation is focused on prevention and remediation.**
- ⊃ **Reduced number of unfair practices, violation of rights and standards and dishonest activities.**

**How:** Specifically, the Board regulates the death care industry to ensure the safety, soundness and availability of products, services and facilities. As a taboo subject, many families do not pre-plan or prepare for the financial or decision-making required with the death of a family member, and there is strong potential for misuse or misrepresentation of financial instruments or services. Specifically:

- The Board will focus on improving the public visibility and understanding of the death care industry, and the current and emerging trends and issues for consumers and licensees.
- The Board will support efforts to ensure the availability of skilled practitioners in the death care industry who can meet the needs of a changing population.
- The Board will provide sufficient regulation to ensure consumer protection and safety while honoring cultural or personal preferences or practices.
- The Board will continue to provide leadership in ensuring consumer choice and protection with regard to the pre-arrangements of death care goods and services (pre-need arrangements).
- The Board will ensure the proper regulation and utilization of new disposition technologies and practices.
- The Board will provide expertise and policy relating to the disposition of indigent remains.
- The Board will effectively partner with other State agencies in order to meet the mission of the Board, as well as to improve consumer protection and to streamline regulations where possible both under the Board's direct oversight and when there is overlap with other agencies.

## ➤ Foster a culture of disaster preparedness and resiliency to actively support Oregon's diverse citizens.

**How:** Funeral Service Practitioners are essential to an effective response to a disaster, as they play a role in handling, caring for and processing human remains. The Board actively promotes practitioner participation in disaster preparedness training and exercises, while also coordinating with other state, county and federal agencies to incorporate consideration of—and provide access to—practitioners in this area. Additionally, ensuring sufficient death care facilities are available in different communities is also critical as many of these facilities may be needed for storage of remains. While the Board does not directly own or establish facilities, the Board can identify facility availability to other agencies and can work with communities to identify gaps in coverage.

### Current 14-18 Deliverables

- Streamline and Automate Board meetings; provide ability for all stakeholders to attend board meetings remotely.
- Continue to maintain geographically diverse membership.
- Create representation opportunities on the Board for all licensees.
- Work with OHA to improve Indigent Disposition Fund administration.
- Partner to improve profession entry & education requirements to support skilled practitioners in all communities.
- Increase educational support programming for licensees through general material, as well as inspection and investigative processes.
- Implement an appropriate continuing education program for licensees.
- Increase focus on preventative document inspection before potential violations.
- Increase consumer outreach and distribution of educational materials through community and agency partnerships.
- Work with Oregon Historic Cemetery Commission to support “dying” cemeteries; to keep facilities open and viable for future generations.
- Reduce overall number of violations.
- Develop recommendations for legislative changes to clarify or otherwise address shifts in consumer preference and need.

### Historical Perspective

The Board began as the board of licensed embalmers in 1921, and has grown over time to include licensing for other individual practitioners in death care, as well as the inspection and regulation of death care facilities.

Little more than a generation ago, funeral service was virtually the exclusive province of small, locally owned businesses. At the time, funeral homes offered what have since become known as "traditional" goods and services often sold in a package tied to the cost of the casket. Earth burial or entombment was the norm. Although it was not uncommon to buy a cemetery plot in advance or put something aside for funeral expenses, funeral arrangements were, more often than not, made at or near the time of death.

Since then, five somewhat simultaneous developments have altered the character of what is now called the death care industry over the last 30 years.

1. Consolidation—Influx of corporate ownership and multi-facility business models; often incorporating all aspects of death care rather than only one silo (funeral side and cemetery side, for example).
2. Pre-need Sales—Aggressive promotion of “pre-need” arrangements with inconsistent consumer understanding and disclosure.
3. Cremation Rate— The cremation rate, nationwide, has been rising steadily for some time and is expected to continue to do so. According to Cremation Association of North America (CANA) estimates there were 832,340 cremations in 2007 or approximately 34%, up from approximately 19% a decade earlier. There is still significant regional variation, with much higher cremation rates on the West Coast.
4. Alternative Providers—One of the hallmarks of the consolidation era was higher prices. Along with higher prices seemed to come the increasing preference for cremation and growing demand for a low-cost alternative to the cremation services offered by traditional funeral establishments. With lower overhead, alternative providers can profitably offer much lower prices than full service funeral homes. Now, consumers are not just looking for alternatives to the traditional funeral home, but also alternative providers that offer a variety of home-based, “green” or environmentally sensitive, or culturally diverse services. This shift in consumer demand will continue to shape the industry.
5. Government Regulation—based on egregious events, Oregon implemented uniform regulation of death care in 1985, approximately the same time the FTC introduced the Funeral Rule, providing federal standards to the sale of funeral goods and services. Similar improvements to consumer protection were implemented in Oregon in the early 2000 to better provide protections for financial arrangements in pre-need trusts. This oversight is currently under the Department of Consumer & Business Services.

## Summary of Programs & Target Groups

The Board's programs affect those who have suffered a loss, those who make final arrangements and those who provide death care goods and services. In other words, everyone, at one or more times. Persons utilizing death care services tend to be from vulnerable populations, either elderly or in a state of grief. Death care must, by its nature, address all cultural and religious beliefs with regard to the care and mourning of the dead.

Approximately 63,000 deaths will occur in Oregon during the 2015-2017 biennium. Death care services are provided by approximately 2400 practitioners and facilities throughout the state.

For budget purposes, the Board is considered a single program unit. For practical purposes, the Board's principal activities are organized in three sections: 1) licensing and examination; 2) compliance; and, 3) administration. Each of these components has some responsibility for education.

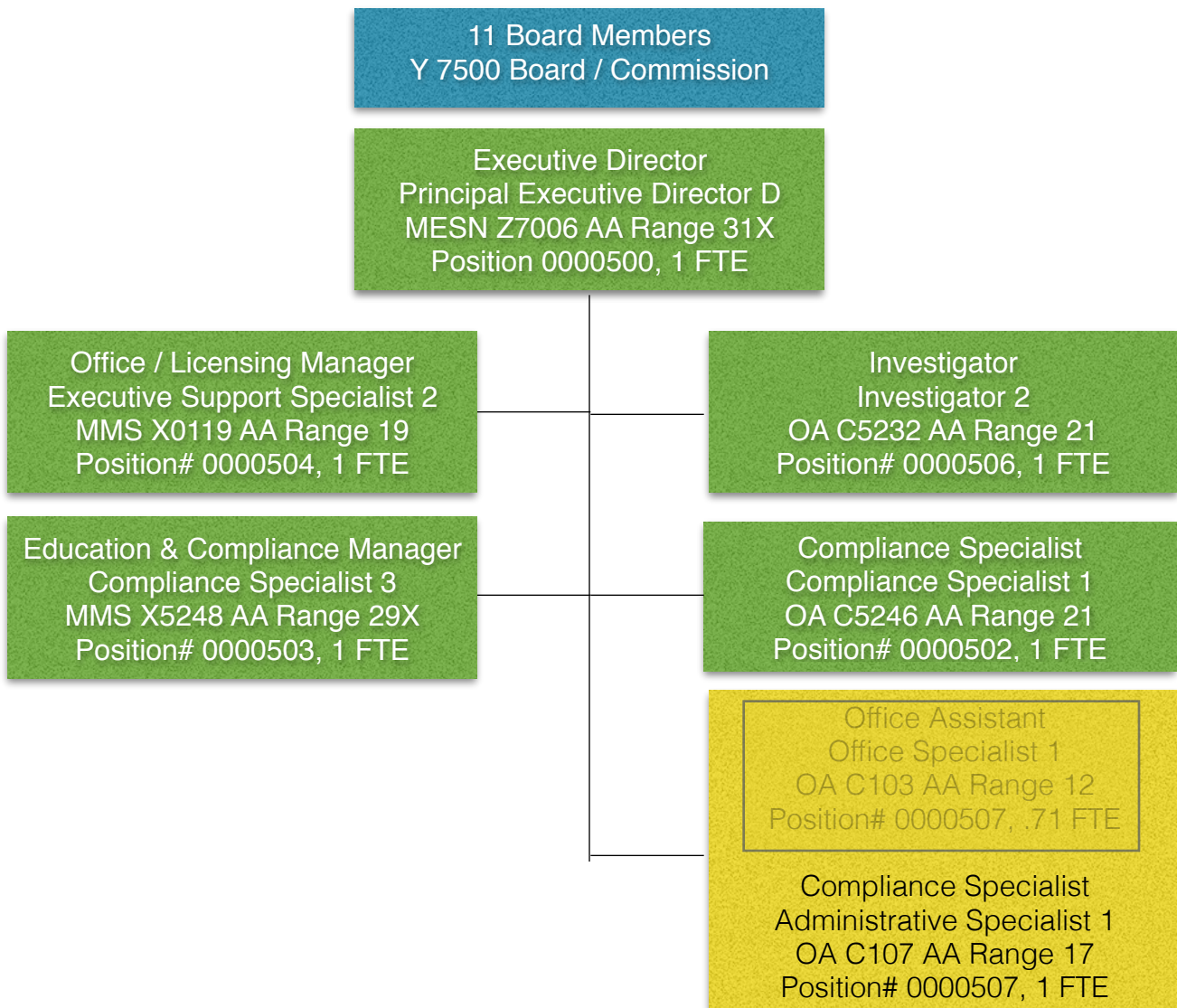
Licensing & Examination	Compliance	Administration & Policy	Education
<p>The Board licenses individual death care professionals and the facilities where they work. This includes individual funeral service practitioners, embalmers, apprentices, interns, pre-need sales people, death care consultants, as well as the funeral establishments, immediate disposition companies, cemeteries and crematories within Oregon. The Board also administers a funeral service practitioner (FSP) and death care consultant (DCC) exams at least twice each year.</p> <p><b>Measures:</b> -Time to process a license application.</p>	<p><b>Inspection</b> The Board inspects all death care facilities at least once each biennium. The Board takes a preventive approach to investigations, preferring to educate licensees when in the field in order to prevent violations. With the exception of egregious or continuing violations, deficiencies noted during routine inspections rarely lead to formal disciplinary action.</p> <p><b>Measures:</b> -Number of inspections completed per biennium.</p> <p><b>Complaint &amp; Background Investigation</b> ORS 676.165 requires the Board to conduct an investigation upon receipt of a complaint by any person against a licensee or applicant. The Board may also initiate an investigation upon its own motion. Though complaint investigations are mandatory, the Board's sanctioning authority is discretionary. Board conducts background checks on a variety of individual license applicants and on the principals of licensed facilities. The Board may deny a license application for conviction of a crime bearing a demonstrable relationship to funeral service practice, embalming practice, or the operation of funeral establishments, immediate disposition facilities, cemeteries and crematories. The Board may also deny an application for any misrepresentation in obtaining a license.</p> <p><b>Measures:</b> -Time elapsed before report presented to Board. -Time elapsed between Board action and final order. -Time to process background verification.</p>	<p>The Board's administrative functions are carried out by the Executive Director with the assistance from staff. Principal functions include program and project planning, development, management and evaluation; budget preparation and presentation; performance measurement; legislative coordination; rule-making; personnel recruitment, management and retention; contracting and purchasing; receipt and expenditure control; accounting oversight; information systems and data base management; meeting planning and facilitation; public relations; and, developing and maintaining critical partnerships and collaborative relationships.</p> <p><b>Measures:</b> -Overall customer satisfaction rating based on surveys. -Accuracy of financial and accounting transactions. -Accuracy and timeliness of public information publishing. -Employee satisfaction ratings. -Board best practices assessment.</p>	<p>The Board serves as an information resource on death care options and resources for the public, other agencies, organizations and the media as well as for licensees. Education is also one of the principal aims of the Board's inspection process. The inspector invites questions and provide on-site technical assistance, as well as explaining the regulatory basis for any deficiencies noted. Finally the Board administers an apprenticeship program for prospective funeral service practitioners and embalmers, and also provides the examinations for licensure for funeral service practitioners and death care consultants.</p> <p><b>Measures:</b> -Reduction in consumer complaints. -Reduction in violations.</p>



## Agency Organization

The Board is composed of eleven members appointed by the Governor: two funeral service practitioners, one embalmer, three cemetery representatives, one crematory operator and **four** public members.

There are six Board staff comprised of an executive director, education & compliance manager, an investigator, an inspector, an office & licensing manager, and a part-time office assistant (5.71) FTE. The Board has a Policy Package to repurpose the part-time position into a full-time position supporting document inspection and the Indigent disposition fund.

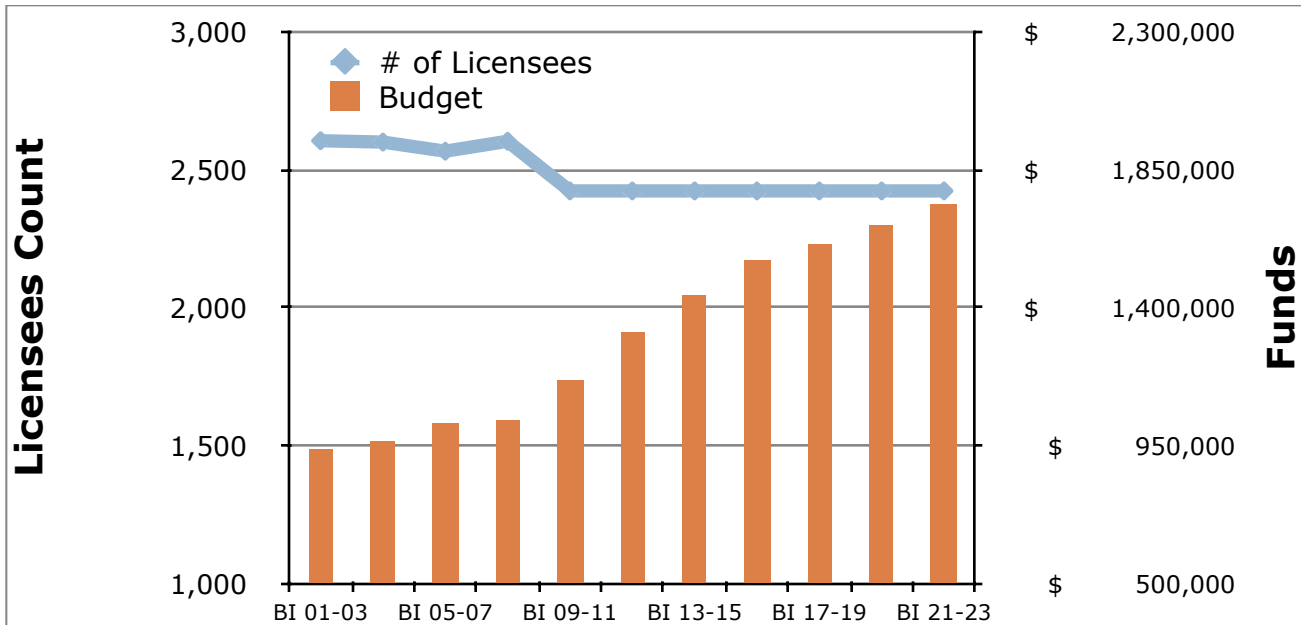




Facility	Initial Fee	Renewal Fee	Comment
Funeral Establishment or Immediate Disposition Company	\$150 minimum	\$700	<i>This facility application needs to be submitted (including Background Information Questionnaire forms) with the \$150 initial application fee (which includes the first principal fee) plus \$50 for each additional principal.</i>
Alternative Disposition Facility	\$150	\$200 plus	<i>This facility application needs to be submitted (including Background Information Questionnaire forms) with the \$150 initial application fee (which includes the first principal fee) plus \$50 for each additional principal. \$100 per year plus \$2 per disposition performed during the two calendar years preceding the year in which the current license expires, payable biennially.</i>
Exempt Operating Cemetery	\$150 maximum	\$0	<i>Cemetery that performs ten or fewer interments annually is considered an exempt operating cemetery, and is entitled to receive a certificate of authority to operate upon payment of an initial fee not to exceed \$100 and a fee not to exceed \$50 for registration of all principals regardless of the total number of principals. The cost of the background investigation is included in this principal fee.</i>
Cemetery	\$150 plus	\$84 - \$1,200	<i>Cemetery that performs more than ten interments annually, the initial application fee is \$150, which includes the fee for first principal, plus \$50 for each additional principal. The cost of the background investigation is included in this principal fee. Cemetery that performs more than ten interments annually, the initial application fee is \$150, which includes the fee for first principal, plus \$50 for each additional principal. The cost of the background investigation is included in this principal fee.</i>  <i>The renewal fee for cemeteries will be based on the total number of interments, inurnments and entombments performed by an individual cemetery in the two years preceding the year in which the current license expires. (\$4 per interment, up to a maximum of 300 interments).</i>  <i>However, any operating cemetery that has twenty or fewer interments in the two years preceding is not required to pay the renewal fee or the fee for any change in principal other than the cemetery manager (facility re-issue fee of \$25).</i>
Crematory	\$150 minimum	\$200 minimum	<i>This facility application needs to be submitted (including Background Information Questionnaire forms) with the \$150 initial application fee (which includes the first principal fee) plus \$50 for each additional principal. Renewal: \$100 per year plus \$2 per disposition performed during the two calendar years preceding the year in which the current license expires, payable biennially.</i>
Removal Company	\$30	N/A	



In the last ten years the board has seen a stabilization of licensee base, which is not expected to increase in the near future as the industry itself does not anticipate net growth. However, operational costs, tied predominantly to personnel have, and will likely increase steadily. In addition, there is a growing need to increase outreach programming to the general public informing them of their options with an anticipated increase in deaths within next ten years. The Board recognizes the need to identify alternative operational models that afford greater fiscal sustainability.



### Recent Specific Program & Service Delivery Improvements (within existing limitation)

#### Redesign of Inspection Process

In 2014 the Board performed an end-to-end assessment of the inspection process to address several issues; including sub-par performance on completion of inspections as well as complaints by licensees about the experience itself. In analysis, it was determined that a key driver of both was the significant increase in complexity and importance of document reviews relative to physical facility inspections. The inspections were disconnected, allowing for efficiencies in the completion in both. For the first time in decades, the Board will complete all facility inspections within the biennium in spite of staffing impacts and other operational factors. The Board will be continuing to refine and improve inspections in 2015 and beyond.

#### Electronic Board Packet Distribution and Online Meetings

In 2013 and 2014 the Board has been continually improving Board meetings from both the perspective of members as well as stakeholders. In 2014, the Board began an electronic packet and paperless meeting program, which has greatly reduced the production of paper, and improved the security of protected

information. This automation is also allowing the Board to implement access for stakeholders to attend meetings and see presentation materials online.

### **Eliminated Case Backlog and Improved Case Management Processes**

Due to a number of factors, the Board has been carrying a large case backlog. In 2013 and 2014, the Board was able to resolve outstanding cases and streamline the case management process significantly such that the backlog was completely eliminated in 2014. The new processes also provide better visibility into case status from initial complaint, through formal report to Board, and until final resolution of the case.

### **Improved Management Data**

The Board has also made improvements in the internal processes and systems that are allowing for the generation of better management reporting data, which allows for information to be used as **leading** indicators so that changes can be made before service levels drop below desired thresholds. The Board is continuing to refine systems and processes and will be reviewing internal performance measures in 2015.

## **Summary of Proposed Legislation Affecting Agency Operations**

### **Policy Package: 101**

Improve document audit practices related to customer contracts and pre-arrangement files at licensed facilities. Also, provide support transfer of the oversight and day-to-day operation of the Indigent Disposition Fund from OHA to OMCB.

#### REQUESTED CHANGE

Reclassification and increase of existing FTE from .71 to 1 FTE and related increase in limitation. Covered by existing revenue. No increase in fees.

### **HB2471**

Makes modifications to statute to support updates to educational requirements, reciprocity requirements, as well as existing apprenticeship and internship programs. Allows the Board to work with stakeholders to establish competency based assessment criteria in Rule. Enables potential practitioners to learn and work in their own communities rather than need to move to Portland.

#### REQUESTED CHANGE

Makes various changes to statute to remove certain requirements and language. No fiscal impact.

### **HB2472**

Changes statute to allow for creation of self-inspection program to complement education and Board inspection programs. Specifics of the program will be set in Rule. Does not reduce or change statutory inspections by Board.

#### REQUESTED CHANGE

Removes prohibition for persons “actively engaged in the profession” or Board members from performing inspections. No fiscal impact.

## Agency Performance

### Legislatively Approved Annual Key Performance Measures

<i>Title</i>	<i>Actual FY2013</i>	<i>Actual FY2014</i>	<i>% Change FY13 to FY14</i>	<i>Projected FY2015</i>	<i>Target</i>
<b>Facility Inspections</b> - percent of licensed facilities inspected not less than once per biennium.	46%	51%	+5%	100%	100%
<b>Investigations</b> - percent of investigative reports completed within six months of a complaint from any person against a licensee.	54%	55%	+1%	100%	100%
<b>Customer Service</b> - percent of persons rating their satisfaction with the agency's customer service as "good" or "excellent": Overall, timeliness, accuracy, helpfulness, expertise, availability of information.	85%	87%	+2%	90%	90%
<b>Best Practice</b> - Percent of total best practices met by the Board.	100%	100%	-	100%	100%