

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/02/17  
**SPONSOR** Woods **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Funeral Service Director's License **SB** 146

**ANALYST** Amacher

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
Indeterminate	Indeterminate	Indeterminate	Recurring	See Fiscal Impacts

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 295

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 146 amends the Funeral Services Act by creating licensure requirements for a funeral service director and an apprentice; and defining the scope of practice of funeral services. If enacted, this bill would become effective June 16, 2017.

### FISCAL IMPLICATIONS

SB 146, would add additional licenses overseen by the board, which may increase revenue and could result in additional disciplinary action requiring assistance by the board's counsel and administrative prosecutor. However, the fees associated with the proposed two levels of licensure have not been determined. Therefore, revenues cannot be identified. There may be nominal costs associated with rule changes on behalf of the AGO and RLD. RLD suggests the costs for rule promulgation may approximately be \$8 thousand for FY 17 and a recurring \$5 thousand would be required for administration of the new licensure requirements. It should be noted that the supporting calculations and reasoning behind these figures were not provided. It is

unclear how \$8 thousand in administrative costs could be incurred in FY 17 if this bill does not go into effect until June 16, 2017, should the bill be enacted.

The AGO's Open Government Division provides legal counsel to over 100 state boards and commissions, including the board of funeral services. Additionally, the AGO's Litigation Division administratively prosecutes civil violation of the Funeral Services Act.

## **SIGNIFICANT ISSUES**

Senate Bill 146 amends the Funeral Services Act by creating licensure requirements for a funeral service director and an apprentice and further defines the scope of practice of funeral services.

Section 1 of SB 146 defines “apprentice funeral service director” and “funeral service director”. An “apprentice funeral service director” is defined as a person learning to make arrangements for or direct funerals under the supervision of a funeral services practitioner at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act (Act). It should be noted this definition is duplicative of “funeral service intern” which exists in current law.

As proposed in SB 146 a “funeral service director” means a person licensed to make arrangements for or direct funeral at a funeral establishment or commercial establishment that is licensed pursuant to the Act. This proposed term is similar to the current definitions of “funeral service practitioner” and “practice of funeral service.” The "practice of funeral service" means those activities allowed under the Funeral Services Act by a funeral service practitioner or funeral service intern (Chapter 61-31-3 NMSA 1978).

Section 2 presents new material outlining the licensure requirements for a “funeral service director” and an “apprentice funeral service director”. Section 2 also outlines scope of practice and limitations of apprenticeship. As proposed, an apprentice who is at least eighteen years of age and is a high school graduate, or the equivalent, may apply to become an apprentice funeral service director after conducting at least 50 funerals in no fewer than 12 months under the supervision of a funeral service practitioner. The apprentice must have not been convicted of a crime involving moral turpitude.

## **RELATIONSHIP**

HB 295 delays the repeal of the Funeral Services Act to July 1, 2023. The board must establish fees and a means to investigate violations, and may impose violations such as a \$2,000 fine. HB 295 creates a funeral services fund which will be utilized to carry out the provisions of the Funeral Services Act upon the promulgation of new rules by the board.

## **OTHER SUBSTANTIVE ISSUES**

RLD suggests there may be confusion as a result of SB 146. There may become a consumer protection issue as the title “director” implies qualifications, knowledge and education that are not required for the license. The title used in the Funeral Services Act for funeral practitioner, funeral director or mortician are reserved for fully licensed practitioners in order to prevent the general public from misunderstanding the terms.

The AGO notes the term “supervision” as presented in the newly defined categories is a requirement. However, it is not specified as to whether the supervisor must be physically present (defined in the Funeral Services Act as “direct”) or may be available for advice and assistance, but not necessarily physically present (defined as “general”.) This lack of specificity does not invalidate the provisions of SB 146. Yet, the board could benefit from this being clarified now as to which type of supervision is required. This may help prevent the need for further rulemaking, especially as the authorizing statute already distinguishes direct from general supervision.

The Funeral Services Act sunsets effective July 1, 2018. This legislation does not address that issue.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The diligence of funeral service practitioners will continue with the support of interns, the supervision of the board, and the guidance of existing laws, rules and licensure.

JMA/al/jle