

**Department of Legislative Services**  
Maryland General Assembly  
2014 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 13

(Chair, Health and Government Operations  
Committee)(By Request - Departmental - Labor,  
Licensing and Regulation)

Health and Government Operations

Finance

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**Office of Cemetery Oversight - Perpetual Care Trust Funds and Preneed Trust  
Accounts - Regulation**

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This departmental bill clarifies that realized capital gains are not income of a perpetual care trust fund and must instead be deposited into the trust fund as principal. A trustee of a perpetual care trust fund may not make a loan or direct or indirect investment of any kind in buildings or structures appurtenant to any real property of a cemetery. Prohibitions on the use of funds from preneed trust accounts are established and mirror those already in place for perpetual care trust funds. Specified distributions of funds from preneed trust accounts are required to include a prorated proportional share of capital gains attributable to those funds.

The bill takes effect July 1, 2014.

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**Fiscal Summary**

**State Effect:** The bill does not directly impact the operations or finances of the Office of Cemetery Oversight within the Department of Labor, Licensing, and Regulation (DLLR).

**Local Effect:** None.

**Small Business Effect:** DLLR has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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## Analysis

**Bill Summary/Current Law:** There are two types of trust funds related to cemetery services regulated by the Office of Cemetery Oversight: perpetual care trust funds and preneed trust accounts. In general, the bill brings the treatment of money deposited in both types of funds into conformity.

### *Perpetual Care Trust Funds*

*Current Law:* All cemeteries created in the State after October 1, 2001, and not otherwise exempt must establish a perpetual care trust fund. A cemetery subject to perpetual care trust requirements must initially deposit \$10,000, \$25,000, or \$50,000 into a perpetual care trust, depending on the size of the cemetery and whether or not it sells burial goods. In addition, the cemetery must then deposit at least 10% of the actual selling price of each right of interment or, if the burial space is sold at a discount or at no cost, at least 10% of the imputed cost of the fair retail value and additional specified funds over time.

The income from the perpetual care trust fund must only be used for the perpetual care of the cemetery, including:

- the maintenance, administration, supervision, and embellishment of the cemetery and its grounds, roads, and paths; and
- the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.

The income may not be used to care for memorials or monuments.

The trustee for a perpetual care trust fund must be a bank, other specified financial institution, or a person who meets specified bonding requirements and who is subject to approval by the Director of Cemetery Oversight.

A trustee may not use any perpetual care trust funds to purchase an interest in any contract or agreement to which a registrant, permit holder, or related person is a party. In addition, a trustee may not make a loan of any kind (1) to a registrant, permit holder, or any person subject to perpetual care trust requirements; (2) to or in an entity or business operation owned or under the control of a registrant, permit holder, or any person subject to perpetual care trust requirements; (3) on or in any real estate of a cemetery; or (4) in any permanent improvements of a cemetery or its facilities.

*The Bill:* Realized capital gains of a perpetual care trust fund are not income of the perpetual care trust fund and must be deposited into the fund as principal. The bill

clarifies that a trustee may not make a loan or direct or indirect investment of any kind on or in the real *property* of a cemetery. It further prohibits a trustee from making a loan or direct or indirect investment in buildings or structures appurtenant to any real property of a cemetery.

### *Preneed Trust Accounts*

*Current Law:* In general, a seller of preneed goods or services must put in trust the second 50% of the total preneed burial contract price as the seller receives payment from the buyer. Within 30 days after receipt of the last payment, the seller must deposit an additional amount to make the balance in the trust 55% of the contract price. For caskets or casket vaults sold under a preneed burial contract, the seller must deposit 80% of the selling price into the preneed trust.

The trustee for preneed trust accounts funds must be a bank, other specified financial institution, or a person who meets specified bonding requirements and who is subject to approval by the Director of Cemetery Oversight.

A trustee may invest money of a trust account in any security that is a lawful investment for a fiduciary, including a time deposit or certificate of deposit issued by the trustee.

In general, a trustee may not disburse specific funds until preneed goods are delivered or preneed services are performed in a preneed burial contract. Rather, money in the preneed trust account must remain in the trust account, be reinvested and compounded, and be disbursed only for payment of appropriate financial management fees, commissions, and other related costs.

When specified funds are disbursed from a preneed trust account to either the seller of preneed goods or services or the buyer of preneed goods or services, a trustee must also pay accrued interest on the funds.

*The Bill:* Nearly identical prohibitions to those on loans or investments established and modified under the bill for perpetual care trust funds are established for preneed trust accounts, except that crematories are also included for preneed trust accounts. Trust income, including capital gains, must remain in the trust account, be reinvested and compounded, and disbursed only for appropriate payments.

Further, in addition to accrued interest, when specified funds are disbursed from a preneed trust account to either the seller of preneed goods or services or the buyer of preneed goods or services, a prorated proportional share of total realized capital gains attributable to those funds must be included in the payment.

**Background:** Chapter 195 of 2002 prohibited the use of perpetual care trust funds for specified types of risky investments; however, no such legislation prohibiting the use of preneed trust account funds for these investments has since been introduced.

DLLR advises that the primary type of investment of perpetual care trust funds and preneed trust accounts has historically been interest-bearing accounts with national and State banks and savings and loan associations. However, as interest rates paid by banks and related financial institutions have decreased significantly in recent years, perpetual care trust funds and preneed trust accounts are increasingly being invested in the stock market. Current statutory language does not address the treatment of realized capital gains associated with this method of investment.

*Office of Cemetery Oversight*

The Office of Cemetery Oversight was established by Chapter 675 of 1997. The office registers and regulates the cemetery and burial goods industry in the State under the leadership of a director. An advisory council serves as a source of expertise for the director and provides insight into the needs of the business community and the consumers served by the industry. The Cemetery Oversight Fund was established as a continuing, nonlapsing special fund to cover the documented direct and indirect costs of fulfilling the statutory and regulatory duties of the office.

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - January 27, 2014  
mc/mcr Revised - House Third Reader - March 21, 2014

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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Office of Cemetery Oversight –Perpetual Care Trust Funds and  
Preneed Trust Accounts - Regulation

BILL NUMBER: HB 13

PREPARED BY: Department of Labor, Licensing and Regulation

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL  
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL  
BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS