

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 1003

(Senator Muse)

Finance

Business Regulation - Pet Cemeteries - Establishment and Operational
Requirements

This bill establishes a regulatory framework for “pet cemeteries” and explicitly exempts pet cemeteries from the registration and permitting requirements for human cemeteries. A person may not establish, operate, or allow a pet cemetery to be operated in violation of the bill.

Fiscal Summary

State Effect: The Department of Labor, Licensing, and Regulation (DLLR) can handle the bill’s requirements with existing budgeted resources. The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Meaningful for a limited number of small businesses.

Analysis

Bill Summary: “Pet cemetery” means land, together with any structures, facilities, or buildings appurtenant to the land, offered to members of the general public for use or reservation for use for interment of pet remains through (1) individual interment, above or below ground or (2) a combination of individual interment and communal burial. It does not include land used exclusively for landfilling or the communal burial of pets.

“Pet” means an animal that has been adapted or tamed for companionship or for the pleasure or advantage of people and includes dogs, cats, birds, rabbits, and hamsters. “Pet cemetery owner” includes the person who owns, operates, or oversees a pet cemetery.

The owner of any land used or to be used as a pet cemetery must file a declaration, subject to specified conditions, restricting the use of the land to use as a pet cemetery in the office of the clerk of the circuit court of the county in which the land is located. The restriction may only be removed as specified in the bill, which is subject to certain notification requirements.

A person may not use land that is subject to a restriction as a pet cemetery for any purpose other than as a pet cemetery. Each burial lot sold or conveyed in a pet cemetery must be held by the owner of the lot only for the burial of a pet. A human body may not be interred in a pet cemetery.

The purchaser of a burial lot or burial right in a pet cemetery must notify the pet cemetery owner in writing of a change in address.

Perpetual Care Trust Fund Requirement

Each pet cemetery owner who sells or offers to sell to the public a burial lot or burial right in a pet cemetery must establish and maintain a perpetual care trust fund for each pet cemetery. A perpetual care trust fund required under the bill must be a single purpose trust fund. Each pet cemetery owner must deposit a minimum of \$10,000 into the fund before the first lot, parcel of land, burial, or interment right is sold.

The income from the perpetual care trust fund must be used only for the perpetual care of the pet cemetery, including (1) the maintenance, administration, supervision, improvement, and preservation of the grounds, lots, markers, buildings, equipment, statuary, and other real and personal property of the pet cemetery and (2) for the payment of real property taxes.

A pet cemetery owner must maintain records and prepare an annual report concerning all of the assets and investments of the perpetual care trust fund and must (1) make the report available for inspection at reasonable times to any owner of a burial right in the pet cemetery and (2) file the report with the Office of Cemetery Oversight in DLLR.

Money in the perpetual care trust fund may not be made available to any creditor as assets of the pet cemetery owner or as payment for any expenses of any bankruptcy or similar proceeding, but it must be retained intact to provide for the future maintenance of the pet cemetery in the event of (1) the bankruptcy or insolvency of the pet cemetery

owner; (2) an assignment by the pet cemetery owner for the benefit of creditors; or (3) an adverse judgment against the pet cemetery owner.

The perpetual care trust fund is not assignable and is not subject to judgment, execution, garnishment, attachment, or other seizure by process in bankruptcy or otherwise, or to sale, pledge, mortgage, or other alienation.

Penalties

A person who violates the bill is guilty of a misdemeanor and on conviction is subject to a fine of up to \$3,000 and/or two years imprisonment. A person who willfully misappropriates or intentionally and fraudulently converts perpetual care trust fund money in excess of \$100 to that person's own use is guilty of a felony and on conviction is subject to a fine of up to \$10,000 and/or five years imprisonment.

Current Law: Generally, an individual must register with the Office of Cemetery Oversight in DLLR before (1) engaging in the operation of a cemetery or crematory or (2) providing burial goods in the State. Pet cemeteries are not regulated by the office.

A corporation, limited liability company, or partnership must obtain a permit issued by the director of the office prior to engaging in the operation of a cemetery, crematory, or burial goods business in the State. Permit renewal fees are \$200 plus \$15 per sales contract of \$250 or more entered into within the past two fiscal years. Registration and permit fees accrue to the Cemetery Oversight Fund.

The registration and permitting requirements do not apply to:

- a person that owns and operates a *bona fide* religious nonprofit cemetery;
- a cemetery owned by a not-for-profit organization created before 1900 by an act of the General Assembly;
- a county, city, or municipality that owns and operates a cemetery in the State;
- a veterans' cemetery operated by the State; or
- a private family cemetery that does not conduct public sales.

The Maryland Cemetery Act also does not apply to (1) the operation of a funeral establishment, including the sale of burial goods in the ordinary course of the funeral establishment's business; (2) the operation or ownership of a crematory regulated by the State Board of Morticians and Funeral Directors; (3) the operation or ownership of a crematory or incinerator at a licensed medical facility or educational institution; or (4) a licensed funeral director or mortician acting within the scope of the individual's license.

Subject to specified limited exceptions, each sole proprietor, registered cemeterian, permit holder, or any other person subject to registration or permit requirements who sells or offers to sell to the public a burial lot or burial right in a cemetery as to which perpetual care is stated or implied must have 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.

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.

Cemeteries that are not required to be registered by the office are not required to have perpetual care trust or preneed trust accounts.

Background: 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.

There are several pet cemeteries located in the State, such as the Rosa Bonheur Memorial Park in Howard County, which was among the first pet cemeteries in the nation and one of the first places to allow individuals to be interred with their pets. It is the final resting place of approximately 22,000 animals and at least 20 human pet owners. Complaints have been made about the condition of the property, and pet owners have charged that the services of interment have not been performed. It is currently maintained entirely by volunteers.

Small Business Effect: Owners of pet cemeteries in the State are likely small businesses. These businesses are required to designate land as a pet cemetery with the clerk of the court in the county in which the pet cemetery is located, establish a perpetual care trust fund, and meet the bill's reporting requirements. Further, the land designated

as a pet cemetery retains that designation unless it is removed through the process specified in the bill, and cannot be used for any other purpose. Moreover, pet cemeteries that currently allow human interment can no longer do so under the bill.

Additional Comments: The Department of Legislative Services notes that the minimum perpetual care trust fund requirement of \$10,000 – the investment income of which is used for perpetual care of the pet cemetery – is likely insufficient for any pet cemetery of a substantial size. *For illustrative purposes only*, if the fund earns 5% annually, \$500 is available for perpetual care in that year. Generally, for human cemeteries, in addition to an initial deposit ranging from \$10,000 to \$50,000 – depending on the size of the cemetery and whether or not it sells burial goods – ongoing deposits of 10% of the sale price of each right of interment sold by the cemetery are required.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State Commission on Criminal Sentencing Policy; Montgomery County; Department of Legislative Services

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