

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 491 (Delegate Morhaim, *et al.*)
Health and Government Operations

Finance

Office of Cemetery Oversight - Conservation Cemeteries - Perpetual Care Trust
Fund Requirements

This bill defines and establishes separate perpetual care trust fund requirements for “conservation cemeteries.”

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: The bill does not materially affect the finances or operations of the Office of Cemetery Oversight or the Department of Labor, Licensing, and Regulation (DLLR). To the extent that new cemeteries are established due to the bill, special fund revenues for the Cemetery Oversight Fund increase due to the issuance of additional permits and licenses. However, the office does not anticipate a significant increase in activity due to the bill, and any additional workload is likewise expected to be minimal and absorbable with existing resources.

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

Small Business Effect: Minimal. The bill likely applies to a limited number of small businesses that operate cemeteries.

Analysis

Bill Summary: “Conservation cemetery” means a cemetery that:

- inters unembalmed human remains in biodegradable materials or burial containers in the ground;

- takes steps to limit environmental impacts to the land, aid in the conservation of natural resources, reduce carbon emissions, and aid in the restoration and preservation of the existing habitat;
- does not use grave liners or vaults;
- allows only memorial markers and headstones made of natural or native materials that are not raised above the ground and do not impede the natural landscape; and
- is designated as a conservation cemetery by the Office of Cemetery Oversight.

In determining whether to designate a cemetery as a conservation cemetery under the bill, the office must consider whether the proposed conservation cemetery (1) is certified by the Green Burial Council or an equivalent organization and (2) has been placed in a permanent conservation easement with a qualified land trust.

Perpetual Care

Each sole proprietor, registered cemeterian, or permit holder that operates a conservation cemetery must deposit initially in the perpetual care trust fund a minimum of \$15,000.

Within 30 days after the end of the month when the buyer of a right of interment in a burial lot in a conservation cemetery makes a final payment, the registered cemeterian or permit holder that operates the conservation cemetery must pay in cash to the trustee for deposit in the perpetual care trust fund:

- at least 5% of the actual selling price of each right of interment in a burial lot; or
- if the burial lot is sold at a discount or at no cost, at least 5% of the imputed cost of the fair retail value.

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. 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.

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. Registration and permit fees accrue to the Cemetery Oversight Fund.

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.

The Green Burial Council is a nonprofit organization that works to encourage environmentally sustainable death care and the use of burial as a new means of protecting natural areas. It offers environmental certificates for funeral homes, cemeteries, and product manufacturers. Initial certification fees range from \$295 to \$495. Renewal fees are \$295 annually.

In February 2014, the Baltimore County Council approved legislation authorizing “conservation burial grounds.” A conservation burial ground must be designed, operated, and maintained in a manner that produces a natural appearance by using plants and materials native to the region and landscape patterns derived from and compatible with regional ecosystems. The land on which a conservation burial ground is located is subject to a permanent conservation easement with a qualified land trust. A minimum tract of 60 acres is required. Memorial grave markers may not be raised above the ground, and no more than 100 burials per acre are permitted.

Conservation easements limit land to specific uses and protect it from development. These voluntary legal agreements are created between private landowners and land trusts, conservation organizations, or government agencies. A land trust is a private, tax-exempt, nonprofit corporation that seeks to preserve land through land acquisition or land donations.

Additional Comments: The Department of Legislative Services notes that the perpetual care trust fund requirements for a conservation cemetery may be insufficient. The bill requires a minimum initial deposit of \$15,000 and an ongoing deposit of 5% of the sale price of each right of interment. The *investment income* from these deposits is intended to fund perpetual care after a cemetery is full.

Generally, for a standard cemetery, 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 must be deposited into a perpetual care trust fund.

For illustrative purposes only, if a perpetual care fund earns 5% annually, \$750 is available each year for perpetual care from an initial \$15,000 deposit. For another \$750 in annual interest earnings, the conservation cemetery would have to sell \$300,000 worth of interments. For a standard cemetery, the amount would be \$150,000.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Green Burial Council; Baltimore County; Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2015
md/mcr Revised - House Third Reader - April 3, 2015

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