HB 489

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 489 (Delegate Krebs)
Health and Government Operations

Cemeteries - Perpetual Care - Distribution From Perpetual Care Trust Fund

This bill increases the amount that *may* be withdrawn from a perpetual care trust fund, including realized capital gains, subject to specified conditions. Distributions from a perpetual care trust fund must still be used for the same purpose – exclusively for perpetual care of the cemetery – as under current law. The Director of the Office of Cemetery Oversight may limit or prohibit a certain fund balance distribution authorized under the bill for specified reasons.

Fiscal Summary

State Effect: Special fund expenditures increase by $31,200 to $41,600 annually beginning in FY 2020; for purposes of this estimate, the midpoint is shown. General fund revenues may increase minimally from capital gains.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	-	-	-	-	-
SF Expenditure	$36,400	$36,400	$36,400	$36,400	$36,400
Net Effect	($36,400)	($36,400)	($36,400)	($36,400)	($36,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local revenues may increase from realized capital gains. The overall effect is likely minimal on any particular local government. The bill does not otherwise materially affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Perpetual Care Trust Funds May Consider Realized Capital Gains as Income

For purposes of perpetual care trust fund distributions, "net income" may, at the discretion of a cemetery, include realized capital gains. A perpetual care fund trustee must pay capital gains taxes from the principal of the perpetual care trust fund.

Options for Distributions from Perpetual Care Trust Funds

By default, a trustee must distribute all net income of a perpetual care trust fund to the cemetery on a monthly basis. This may include realized capital gains at the discretion of the cemetery. However, a cemetery may also select as the method of distribution from a perpetual care trust fund on a monthly, quarterly, semiannual, or annual basis, either:

- *Default Net Income Option:* which under the bill may include realized capital gains at the discretion of the cemetery, as described above; or
- *Fund Balance Option:* an amount up to 5% of the average of the end-of-year fair market value of the perpetual care trust fund for the preceding three calendar years, subject to specified conditions discussed below.

If a cemetery selects either of these distribution options:

- the cemetery must notify the fund trustee in writing at least 30 days before the date the method of distribution will take effect; and
- the method of distribution must remain in effect until the cemetery notifies the fund trustee in writing that the cemetery has selected a different method of distribution.

Fund Balance Distribution

If a cemetery selects the fund balance distribution option, the fund trustee:

- may not reduce the amount of the distribution by any taxes or fees;
- must adopt an investment policy that supports the growth of the perpetual care trust fund; and
- must use this distribution option if the fair market value of the perpetual care trust fund exceeds a specified amount, or, if it does not, must distribute all net income of the perpetual care trust fund to the cemetery on a monthly basis (*i.e.*, the default method) for the remainder of the calendar year.

The Director of Cemetery Oversight may limit or prohibit a fund balance distribution if the director believes that:

- based on a five-to seven-year analysis, investment returns and distribution practices have not resulted in sufficient protection of the perpetual care trust fund's principal; or
- the trustee does not have sufficient knowledge and expertise to administer the perpetual care trust fund in a manner that supports the growth of the perpetual care trust fund.

Current Law: Two types of trust funds related to cemetery services are regulated by the Office of Cemetery Oversight in the Department of Labor, Licensing, and Regulation (DLLR): perpetual care trust funds and preneed trust accounts.

Generally, sellers of perpetual care and preneed services must place in trust a portion of the cost or sale price of the goods or services shortly after the time of sale. "Perpetual care" means the maintenance, including the cutting of grass abutting memorials or monuments, as well as the administration, supervision, and embellishment of a cemetery and its grounds, roads, and paths. Additionally, it includes the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.

The income from the perpetual care trust fund:

- must be used only for the perpetual care of the cemetery, as defined above; and
- may not be used to care for memorials or monuments.

Realized capital gains of a perpetual care trust fund are not income of the perpetual care trust fund and must be deposited in the perpetual care trust fund as principal of the perpetual care trust fund.

Background: The Office of Cemetery Oversight 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.

DLLR advises that 10 other states have enacted similar legislation.

State Effect: The bill authorizes the Director of the Office of Cemetery Oversight to limit or prohibit fund balance distributions from a cemetery's perpetual care trust fund under specified circumstances. However, existing staff within the office do not have the requisite expertise to make the financial calculations necessary to make those determinations. Given the relatively limited scope, the office is likely to contract for necessary services instead of hiring an additional employee. DLLR estimates that about 50 cemeteries may choose the fund balance distribution method, for which determinations may be made. At $50 per hour, DLLR estimates that costs for contractual support range from $31,200 to $41,600 annually, depending on how many cemeteries choose the new distribution method under the bill and how much time is required to make each determination.

General fund revenues increase beginning as early as fiscal 2020 to the extent that cemeteries elect to realize capital gains, subjecting that amount to taxation. The amount cannot be reliably estimated at this time but is likely minimal.

Small Business Effect: Small businesses that are cemeteries have access to a previously unavailable source of funding for perpetual care – realized capital gains and/or fund balance. However, the bill exposes these businesses to additional risks of depleting the assets in their perpetual care trust funds.

Additional Information

Prior Introductions: None.

Cross File: SB 434 (Senator Klausmeier) - Finance.

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

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