

Department of Fiscal Services
 Maryland General Assembly

FISCAL NOTE
Revised

House Bill 559 (Delegate Morhaim, *et al.*)

Economic Matters

Referred to Finance

Death Care Industry Regulation

This enrolled bill creates an Office of Cemetery Oversight to regulate the death care industry in the State through specified registration requirements, related rules, biennial permit fees, and hearing procedures. Religious and nonprofit cemeteries that do not sell preneed contracts are exempt from the bill's registration and permitting requirements, although they are required to file a statement with the office once every two years, unless no burials have taken place within the previous five years. The bill also provides penalties for certain violations.

The bill is effective July 1, 1997. The provisions relating to registration, permitting, or statement filings take effect on October 1, 1997, except for the requirement pertaining to a bona fide religious, nonprofit cemetery that sells preneed goods. The provisions relating to these entities take effect on October 1, 1999.

Fiscal Summary

State Effect: Special fund revenues could increase by an estimated \$272,000 in FY 1998; special fund expenditures would increase by an estimated \$133,100. General fund revenues could decrease by an estimated \$2,800 in FY 1998; general fund revenues and expenditures could also increase by an indeterminate amount due to the bill's penalty provisions. Future year projections reflect adjustments for growth and inflation.

(in dollars)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
GF Revenues	(\$2,800)	(\$2,900)	(\$2,900)	(\$3,000)	(\$3,000)
SF Revenues	272,000	9,600	291,500	10,200	312,300
GF Expenditures	--	--	--	--	--
SF Expenditures	133,100	146,600	151,800	157,200	162,700
Net Effect	\$136,100	(\$139,900)	\$136,800	(\$150,000)	\$146,600

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

Local Effect: Local revenues and expenditures could increase by an indeterminate amount

due to the bill's penalty provision.

Small Business Effect: Meaningful impact on small business as discussed below.

Fiscal Analysis

Bill Summary: The major provisions of the bill include:

- The advisory council to the Office of Cemetery Oversight is to be comprised of 11 members.
- The Secretary of the Department of Labor, Licensing, and Regulation will appoint a full-time Director who may employ a staff.
- The Director will adopt a code of ethics, establish rules and regulations, conduct registration and permitting activity, charge fees for the application, issuance, and renewal of registration and permits, and hold hearings. Fees collected by the Director will be deposited into the Cemetery Oversight Fund and must support the direct and indirect costs of the office.
- The Director has the power to deny a registration or permit to any applicant, reprimand a registrant or permit holder, issue a cease and desist order, and suspend or revoke a registration or permit. The Director may seek a restraining order to prevent a registrant or permit holder charged with a violation that could result in a suspension or revocation of the registration or permit from operating any cemetery or burial goods business.
- All preneed burial contract sellers must provide the prospective buyer with a general price list. The seller must also disclose to the buyer all goods and services reasonably expected at the time of need not included in the preneed contract and the buyer's cancellation and refund rights. Cemeterians and third party sellers who offer preneed must also disclose to the buyer who will install the death care goods, any applicable warranties, when interest and finance charges may be levied on preneed contracts, the manner of goods storage and delivery, and the remedy if goods are damaged.
- The office is required to document any complaints filed and report to the General Assembly on or before December 31 of each year beginning with December 31, 1998.
- The Director may impose a civil penalty of up to \$5,000 for each violation and a penalty of up to \$500 for each day a violation continues past the time set for its correction.

- The Director will attempt to negotiate settlements for complaints and, at either party's request, refer the complaint to the Attorney General or Office of Administrative Hearings for binding arbitration. If a hearing is conducted by the Director and the proposed action by the Director is upheld, the appellant must pay the hearing costs.
- Corporations that register with the Director must also have a separate registered cemeterian or seller responsible for the operation of the business.
- Sellers of burial goods and services are required to provide specified written disclosure to a consumer no later than the first scheduled face-to-face contact or at the time the contract is executed.
- Those who engage in cemetery operations or sell burial goods without being registered or holding a permit, or represent themselves as a registered or permit holding cemeterian or burial goods seller, are guilty of violating this bill and are subject to a fine of up to \$3,000 and/or imprisonment for up to one year.
- In Baltimore County, a registered cemeterian or permit holder may buy, hold, or use, for burial, up to 200 acres in one tract.
- The Director, in cooperation with the State Board of Morticians, is required to conduct a study on the feasibility of combining the two offices, illegal grave recycling, and the historic preservation of graves and report to the General Assembly by July 1, 1999.
- The Office of Cemetery Oversight will undergo sunset review on July 1, 2006, subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act.

State Revenues: It is estimated that there are 1,400 cemeteries in the State, including approximately 60 for-profit cemeteries. The Director of the Office of Cemetery Oversight is required to set registration and permit fees based on: (1) the size, volume of business, type of service provided, percentage of preneed contracts written by each applicant, and whether the business is for-profit or designated tax exempt; and (2) the direct and indirect cost of maintaining the office. Because the bill establishes a two-year registration/permit term, it is estimated that the State will need to collect approximately \$272,000 in revenue in fiscal 1998 and \$9,600 in fiscal 1999 in order to cover the direct and indirect cost of the office.

Approximately \$2,800 of this special fund revenue will come from redirected general fund revenues each year. Under current law, the Secretary of State collects a \$25 fee for each service from fewer than 60 cemeteries that offer preneed and perpetual care contracts. The bill provides that the Director of the Office of Cemetery Oversight will assess and collect all fees. All revenue generated by the office is to be deposited into the Cemetery Oversight Fund.

General fund revenues could also increase under the bill's monetary penalty provisions for those cases heard in District Court, depending upon the number of convictions and fines imposed. The Director may also impose civil fines for specified violations and any revenues generated would be deposited into the general fund.

State Expenditures: The Director of the Office of Cemetery Oversight will earn approximately \$60,000 annually. The Director may hire a staff. It is estimated that the Director will hire one Typist/Clerk, a part-time Investigator, and a part-time Attorney General. As a result special fund expenditures will increase by \$133,100 in fiscal 1998. This figure reflects salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses and reflects the October 1, 1997 effective date.

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 2% annual increases in ongoing operating expenses.

The bill alters the provisions of law relating to preneed burial goods and services, which are currently regulated by the Secretary of State. Transferring these responsibilities to the Office of Cemetery Oversight will not substantively impact the activities of the Secretary's office and will not reduce expenditures.

General fund expenditures could also increase as a result of the bill's incarceration penalty depending upon the number of convictions and sentences imposed. However, since the maximum penalty is one year and violators are not usually incarcerated for noncompliance with business regulations, the Department of Fiscal Services (DFS) does not anticipate an increase in inmate costs as a result of this bill.

Local Revenues: Revenues could increase under the bill's penalty provision for those cases heard in circuit court, depending upon the number of convictions and fines imposed.

Local Expenditures: Expenditures could increase as a result of the bill's incarceration penalty depending upon the number of convictions and sentences imposed. However, since violators are not usually incarcerated for noncompliance with business regulations, DFS does not anticipate an increase in inmate costs as a result of this bill.

Small Business Effect: Although there are 1,400 cemeteries in the State, it is estimated over 1,300 of them are religious or nonprofit and exempt from the majority of the bill's provisions. Thus, there are approximately 100 cemeteries, 250 funeral homes, and 250 third-party burial goods sellers that would be affected by the bill's requirements. The majority of these death care establishments are small businesses. The permitting and associated fees, as well as the disclosure requirements of the bill, could significantly increase expenditures for

cemeteries offering preneed contracts and other for-profit cemeteries operating in the State.

There are also approximately 250 funeral homes operating in the State. These funeral homes would be required to provide a general price list of goods and services that the buyer may keep. Funeral homes must also disclose all goods and services reasonably expected to be required at the time of burial that are not included in the preneed contract as well as the buyer's cancellation and refund rights. These disclosure requirements could increase expenditures and administrative requirements of these establishments. The bill also benefits funeral homes by reducing the trusting requirement for preneed goods from 100% to 80%. This provides these businesses with access to additional operating funds and allows funeral homes to more easily sell preneed goods.

It is estimated that there are 250 third-party sellers of burial goods who would also be affected by the bill. The bill specifies that those who provide burial goods are required to register with the Director, pay the applicable fees, and provide a financial statement prepared by a certified public accountant as to the financial stability of the business. Thus, the bill would increase the expenditures and administrative requirements of these businesses.

The bill alters trusting requirements for the sale of preneed caskets or casket vaults. The seller is required to put 80% of the selling price of a casket or casket vault in trust. Under current law, the seller must put 50% of the total preneed burial contract price in trust as the seller receives payments from the buyer and increase that amount to 55% of the preneed contract price within 30 days after the last payment is received. Increased trusting could have a meaningful impact on preneed sellers, to the extent that these trusting requirements restrict access to previously accessible operating funds.

Information Source(s): Department of Labor, Licensing and Regulation; Maryland Freestate Cemetery Association; Secretary of State; Department of Fiscal Services

Fiscal Note History: First Reader - February 17, 1997
lc Revised - House Third Reader - March 26, 1997
Revised - Enrolled Bill - April 30, 1997

Analysis by: Shelley Finlayson
Reviewed by: John Rixey

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 841-3710
(301) 858-3710