

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**  
**Revised**

House Bill 80

(Chairman, Economic Matters Committee)  
(Departmental – Labor, Licensing and Regulation)

Economic Matters

Finance

---

**Office of Cemetery Oversight - Perpetual Care**

---

This departmental bill alters various provisions relating to the Office of Cemetery Oversight, primarily dealing with the funding, structure, and management of perpetual care trust funds.

The bill takes effect July 1, 2002.

---

**Fiscal Summary**

**State Effect:** This bill would not materially affect State finances.

**Local Effect:** None.

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

---

**Analysis**

**Bill Summary:** This bill alters various provisions relating to perpetual care cemeteries. Specifically, the bill:

- requires perpetual care cemeteries to disclose on price lists, sales contracts, and any conveyance documents -- in at least 12-point font -- that they are a perpetual care cemetery;
- increases the initial deposit to \$25,000 for a for-profit cemetery or a nonprofit cemetery that sells burial goods and is less than ten acres; and increases the initial deposit to \$50,000 for a for-profit cemetery or a nonprofit cemetery that sells burial goods and is more than ten acres;
- modifies the formula for making additional deposits to the perpetual care trust fund by requiring a deposit of 10% of the actual sales price, or imputed value, per each burial lot, crypt, niche, or burial right to be made upon receipt of final payment. Further, the amount of deposit shall be deducted from the listed sales price and may not be charged as an add-on to the purchaser;
- establishes the perpetual care trust fund as a single purpose trust fund, and as such may not be considered an asset of the sole proprietor or permit holder in the case of bankruptcy, insolvency, assignment for the benefit of creditors, or adverse judgment; and
- protects perpetual care trust funds from judgment, execution, garnishment, attachment, or other seizure by bankruptcy or otherwise, or from sale, pledge, mortgage, or other alienation and is not assignable except as approved by the Director of the Office of Cemetery Oversight.

Other provisions of the bill require that a copy of the most recent trust report must be available in the cemetery office for owners or prospective buyers of burial space, and give the director the authority to require the sole proprietor or permit holder to correct any underfunding, including interest, due to a perpetual care trust fund.

The bill modifies the requirements of fidelity bonds by requiring that the bonding institution be authorized to do business in the State, that the bond is conditioned such that the applicant shall comply with all Maryland laws relating to trust accounts, and that the bond is subject to the approval of the director.

Further restrictions would be placed on the ability of trustees: (1) to purchase an interest in any contract or agreement to which the registrant or permit holder or any entity owned or under the control of a registrant, permit holder, or spouse, child, parent, or sibling of a registrant is a party; or (2) to make any loan or direct or indirect investment of any kind: (a) to any registrant or permit holder, or to any spouse, child, parent, or sibling of a registrant; (b) to or in any entity or business operations owned or under the control of a registrant, permit holder, or spouse, child, parent, or sibling of a registrant; (c) on or in any real estate of a cemetery; or (d) in any permanent improvements of the cemetery or its facilities.

Finally, the bill clarifies that grass-cutting abutting memorials and monuments is an acceptable maintenance activity for perpetual care trust fund use.

**Current Law:** A perpetual care trust fund is required of each cemetery established after October 1, 2001, unless a cemetery is exempted because it is smaller than one acre, or it is owned and operated by a county, a municipal corporation, a church, a synagogue, a religious organization, a State veterans agency, or a not for profit organization created before 1900 by an act of the General Assembly.

Initial trust fund deposits are \$10,000 for cemeteries ten acres or less and \$25,000 for cemeteries more than ten acres. Additional deposits to the trust fund may be either 10% of the selling price or 35 cents for each square foot of land burial space. There are no statutory requirements to structure a trust fund in order to shelter it from losses as outlined in the Bill Summary.

A trustee appointed under this subtitle must be: a national banking association; a bank; a federally-insured savings bank; a federally-insured savings and loan; or a person who provides a fidelity bond from a recognized bonding institution. The trust agreement may include provisions about the reinvestment of trust fund income.

**Background:** DLLR notes that portions of current law dealing with perpetual care, particularly those relating to establishment and maintenance of perpetual care trust funds, were established in 1973 and do not provide the level of funds required to maintain adequate balances to provide perpetual care. The Office of Cemetery Oversight -- through its experience and dialog with industry representatives -- reports that the changes proposed in this bill are meant to ensure the continued financial viability of perpetual care cemeteries and to protect the public's trust that these cemeteries will be able to provide the services that have been purchased.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - January 21, 2002  
ncs/jr Revised - House Third Reader - March 25, 2002

---

Analysis by: Mitchell J. McCalmon

Direct Inquiries to:  
John Rixey, Coordinating Analyst  
(410) 946-5510  
(301) 970-5510