

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 862
Economic Matters

(Chairman, Economic Matters Committee)

Office of Cemetery Oversight - Sunset Extension and Program Evaluation

This bill extends the termination date of the Office of Cemetery Oversight from July 1, 2007 to July 1, 2012, and requires another sunset evaluation, without a preliminary evaluation, on or before July 1, 2011. The bill also makes changes to the Maryland Cemetery Act, notably repealing the office's special fund status, extending the applicability of a number of the Act's requirements to unregistered individuals and businesses without permits who are operating cemeteries or providing burial goods, and requiring the director to conduct an inventory of cemeteries and maintain lists of registered individuals and permitted businesses to compare with the inventory and assess compliance with registration and permitting requirements.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: Special fund revenues and expenditures would decrease and general fund revenues and expenditures would increase correspondingly to reflect the office's conversion from a special fund to a general fund agency. There may be an increase in general fund revenues at the end of FY 2006 due to the reversion of the remainder of the Cemetery Oversight Fund to the general fund, although this amount cannot be accurately estimated. The Governor's proposed budget for FY 2007 for the office is \$313,100 and its estimated revenue is \$160,000. The bill would not directly affect the office's budget, just its fund source.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Recordkeeping/Reporting

The director of the Office of Cemetery Oversight must maintain a list of all for-profit cemeteries and nonreligious-nonprofit cemeteries associated with a registrant or permit holder and a list of all bona fide religious-nonprofit cemeteries, veterans' cemeteries, and local government-owned cemeteries required to file a specified statement or report, for each fiscal year. The lists are required to be open to inspection by the public.

The director must conduct an inventory and issue a report by December 1, 2007, of all known burial sites in the State. The inventory and report must be updated every five years. The director must annually compare the most current inventory with the above-mentioned lists generated from registration, permit, and reporting requirements, to determine the rate of compliance with those requirements. The director must annually report to the General Assembly, regarding the implementation of an action plan, if appropriate, to address any noncompliance issues.

The director is required to report annually to the General Assembly, in a more specific manner than is currently required, regarding complaints received by the office. The report must address the nature of the complaints received; the type of registrant, permit holder, or exemption complained about; how the complaints were resolved; and any disciplinary or enforcement action taken.

Applicability of Specified Requirements

Numerous requirements and restrictions of the Maryland Cemetery Act, including those relating to limits on land used for cemeteries, ownership of burial plots, maintenance of perpetual care trust funds, and written disclosures at the time of contracting for burial goods and services are made applicable to nonregistered and nonpermit holding individuals and cemetery owners.

Special Fund Status Repealed

Provisions relating to the Cemetery Oversight Fund are repealed, yet the director retains the authority to set fees by regulation. The director must pay all funds collected by the office into the general fund. Any money remaining in the Cemetery Oversight Fund at the end of fiscal 2006 reverts to the general fund.

“Perpetual Care” Defined and Specified Exemption Repealed

The term “perpetual care” is defined as the maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishment of a cemetery and its grounds, roads, and paths. It includes the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.

The exemption from perpetual care requirements applicable to a cemetery owned and operated by a county, municipal corporation, church, synagogue, religious organization, or a nonprofit organization created before 1900 by an act of the General Assembly, is repealed.

Investigation Authority/Disposition of Complaints

Authority is extended to a designee of the director to conduct an investigation and an inspection of the records and site of a registered cemetarian, registered seller, and permit holder. The director’s designee may also review and attempt to negotiate settlement of complaints by consumers against registered cemetarians or permit holders.

Status Reports

The office must provide status reports to the Senate Finance Committee, the House Economic Matters Committee, and the Department of Legislative Services (DLS) on or before October 1 of 2007, 2008, and 2009 on the implementation of DLS’s recommendations contained in the sunset evaluation report dated October 2005.

Study Regarding Abandoned and Neglected Cemeteries

The Advisory Council on Cemetery Operations must study the issue of abandoned and neglected cemeteries, assess the success of efforts of other states in maintaining abandoned and neglected cemeteries, and, subject to specified guidelines, develop a model for addressing the issue in Maryland. The council must also assess methods for identifying and working with insolvent or near insolvent cemeteries to ensure regulatory oversight is maintained, and must consider whether a formal category of inactive cemeteries would be appropriate. The council must develop a legislative proposal for introduction no later than the 2009 legislative session.

Current Law: The Office of Cemetery Oversight is a special fund agency within the Department of Labor, Licensing, and Regulation (DLLR). It is scheduled to terminate July 1, 2007.

Powers and Duties of the Director

The director of the office is charged with:

- adopting rules and regulations to carry out State law relating to cemeteries, as well as a code of ethics for operating a cemetery or selling burial goods;
- distributing copies of the Maryland Cemetery Act, the code of ethics, and applicable regulations to applicants for registration or a permit, and updating those applicants upon renewal; and
- publishing consumer information pamphlets in conjunction with the State Board of Morticians and the Consumer Protection Division of the Office of the Attorney General describing consumer rights in the purchase of funeral and cemetery goods and services and any other information the director deems necessary.

The director is authorized to:

- conduct investigations and inspections of the records and site of a registered cemeterian, registered seller, or permit holder, in response to a written complaint or at the director's discretion;
- hold hearings on any matter under the Act;
- administer oaths, examine witnesses, and receive evidence;
- issue subpoenas for the attendance of a witness or production of evidence in connection with an investigation or hearing;
- bring suit on behalf of the State to enforce the Act by injunction;
- issue a cease and desist order in response to a violation of the Act; and
- refer violations of the Act or alleged unfair or deceptive trade practices to the Attorney General.

Regulatory Jurisdiction

The office oversees registration and permitting of individuals and business entities engaging in the operation of cemeteries and the sale of burial goods and services. The requirements of the Maryland Cemetery Act (Business Regulation Art. § 5-100, *et seq.*) are generally only applicable to registered cemeterians and permit holders. The registration and permitting provisions of the Act do not apply to religious, nonprofit cemeteries, nonprofit organizations created by the General Assembly before 1900, local government-owned and operated cemeteries, and veterans' cemeteries operated by the State. These cemeteries, however, must file a statement with the office once every two years including the name and address of the cemetery, the owner and operator of the

cemetery, and the individual responsible for oversight of the cemetery. None of the provisions of the Act apply to the operation of a funeral establishment, a licensed funeral director, or a licensed mortician.

Advisory Council

The Advisory Council on Cemetery Operations is an 11-member council appointed by the Secretary of Labor, Licensing, and Regulation. The council membership represents different segments of the cemetery industry as well as consumers. Each member's term is three years, and the council convenes at least once a year to give advice to the Secretary and director.

Cemetery Oversight Fund

The office is funded by the Cemetery Oversight Fund, a special, nonlapsing fund used to cover the actual documented direct and indirect costs of the office. Registration and permit fees are set by the director so as to approximate the costs of the office and are paid into the fund.

Registration and Permitting

An individual must register with the office and a business entity must obtain a permit, in order to operate a cemetery or provide burial goods in the State. An individual applicant must be 18 years old, of good character and standing, and able to show that the cemetery or burial goods business they are affiliated with is financially stable. A business entity must designate a registered cemeterian or burial goods seller as a responsible party for each cemetery or burial goods business it owns; provide the name and address of each cemetery or burial goods business it owns; provide a list of officers, directors, members, partners, agents, and employees of the entity; and meet financial stability requirements.

The director may deny, suspend, or revoke the registration or permit of an individual or business entity for violations of the Maryland Cemetery Act and regulations, or for other specified reasons. The director may also assess up to a \$5,000 civil penalty for each violation and \$500 per day for each day a violation continues uncorrected.

Criminal Penalties

A person who establishes or operates (or allows to be operated) a cemetery in violation of the State cemetery law is guilty of a misdemeanor and is subject to a fine of up to \$1,000 and imprisonment for up to one year, or both.

Land Use/Cemetery Ownership

A registered cemeterian or permit holder generally may not buy, hold, or use more than 100 acres and any land within the limits of a municipal corporation (unless authorized) for burial property. A certificate, under seal of a registered cemeterian or permit holder, of ownership of a burial lot or crypt has the same effect as a conveyance of real property that is executed, acknowledged, and recorded as required by law.

Perpetual Care

A registered cemeterian or permit holder that sells or offers to sell a burial lot or burial right in a cemetery at which perpetual care (not defined, but generally including maintenance, administration, supervision, and embellishment of the cemetery and its grounds, roads, and paths) is stated or implied is required to keep detailed records of all such sales and all money received. A certain percentage of the money received from the sale of rights of interment must be put in trust. The records of a registered cemeterian or permit holder and trustee may be inspected by the director, the Attorney General or an authorized representative of the Attorney General, and the State's Attorney for the county where the cemetery does business or where the cemetery is located.

A cemetery that has less than one acre available for burial or is owned and operated by a county, municipal corporation, church, synagogue, religious organization, nonprofit organization created before 1900 by an act of the General Assembly, or a State veterans' agency is exempt from perpetual care requirements.

Pre-need Contracts

A registered cemeterian, permit holder, or other person that sells pre-need goods or services is required to keep detailed records of all contracts and all money received. A certain percentage of money received for a pre-need contract must be put in trust. The records of each seller and trustee may be inspected by the director, the Attorney General or an authorized representative of the Attorney General, and the State's Attorney for the county where the seller does business.

Written Disclosures

A registered cemeterian or permit holder, at the time of entering into a contract for the sale of burial goods and services must disclose to the buyer in writing: (1) the itemized cost for each service under the contract; (2) a list of services incidental to burial that are not covered by the contract; (3) a statement regarding the cemetery's policy on the use of independent monument companies; and (4) the name, address, and telephone number for the Office of Cemetery Oversight.

Background: The Office of Cemetery Oversight was established by Chapter 675 of 1997 and currently regulates over 1,400 registered cemeterians, burial goods providers, and permit holders. The office has a termination date of July 1, 2007 and underwent a sunset review in 2005 under the auspices of the Maryland Program Evaluation Act (State Government Art., § 8-400 *et seq.*). The report issued at the end of the review made a number of recommendations, most of which are incorporated in this legislation, including the extension of the termination date by five years to July 1, 2012.

The office is currently in the process of adopting regulations increasing registration, permit, per sales contract, and other fees that are estimated to increase revenues by \$300,000 over a period of two fiscal years (a two-year estimate is given due to the office's biennial renewal requirement for registrations and permits).

State Fiscal Effect: Special fund revenues and expenditures would decrease and general fund revenues and expenditures would increase correspondingly to reflect the office's conversion from a special fund to a general fund agency. Though required by statute, the indirect costs of the office were not paid from the Cemetery Oversight Fund prior to fiscal 2004. Indirect costs have been paid from the fund since that time and are expected to be paid if the office remains a special fund agency in fiscal 2007 and in out-years. If this bill is enacted, the indirect costs, which DLLR estimates to be roughly \$50,000 to \$60,000 per year, would be paid from the general fund.

Special fund expenditures would therefore decrease and general fund expenditures would increase correspondingly by roughly \$330,000, assuming \$50,000 of indirect costs and direct costs equivalent to the proposed fiscal 2007 budget allowance. Future year expenditures would reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. DLLR advises the bill's changes will not affect the office's budget. However, because the bill extends the applicability of the law to nonregistered and nonpermit holding individuals and cemetery owners, it is conceivable the office's workload may increase, in which case an additional position could be requested through the budget process.

Special fund revenues would decrease and general fund revenues would increase correspondingly. The estimated revenue of the office in the proposed fiscal 2007 budget is \$160,000, which does not reflect the fee increase that is expected to go into effect in April 2006. Future year revenues cannot be accurately estimated due to a large part of the office's revenues originating from sales contract fees (80% in fiscal 2005), which have fluctuated in the past. The number of sales contract fees being collected annually is also declining, which may be due to saturation of the market and an increasing trend toward cremation.

Reversion

There may be an increase in general fund revenues at the end of fiscal 2006 due to the reversion of the remainder of the Cemetery Oversight Fund to the general fund. Although this amount cannot be accurately estimated, any such reversion is assumed to be minimal.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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