

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

House Bill 966 (Delegate Davis)
 Economic Matters

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, 2013. The bill requires a sunset evaluation of the office on or before July 1, 2012, without preliminary evaluation. The bill also makes changes to the Maryland Cemetery Act, including 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 that operate cemeteries or provide 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 June 1, 2007.

Fiscal Summary

State Effect: Special fund revenues would decrease by \$400,000 and general fund revenues would increase by a corresponding amount to reflect the office’s conversion from a special fund to a general fund agency in FY 2008. Future year revenues reflect the biennial renewal schedule and reductions in sales contract fees. Special fund expenditures would decrease by \$383,400 in FY 2008. General fund expenditures would increase by \$318,400, reflecting the elimination of \$65,000 in indirect costs.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GF Revenue	\$400,000	\$350,000	\$375,000	\$325,000	\$350,000
SF Revenue	(400,000)	(350,000)	(375,000)	(325,000)	(350,000)
GF Expenditure	318,400	326,900	335,700	344,700	353,900
SF Expenditure	(383,400)	(391,900)	(400,700)	(409,700)	(418,900)
Net Effect	\$65,000	\$65,000	\$65,000	\$65,000	\$65,000

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

Local Effect: None.

Small Business Effect: Potential minimal due to expansion of applicability of certain requirements to unregistered individuals and businesses. Additional increase in recordkeeping requirements for certain cemeteries providing perpetual care.

Analysis

Bill Summary:

Recordkeeping/Reporting

For each fiscal year, 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. These lists are open to inspection by the public.

The director must conduct an inventory and issue a report by December 1, 2008, 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 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 and address any noncompliance issues.

The director has 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

Certain restrictions of the Maryland Cemetery Act are made applicable to nonregistered and nonpermit holding individuals and cemetery owners, including a provision that a certificate of ownership under seal of anyone engaged in the operation of a cemetery has the same effect as a conveyance of real property. Limitations on acreage are also extended to anyone engaged in the operation of cemetery.

Special Fund Status Repealed

Provisions relating to the Cemetery Oversight Fund are repealed, with the director retaining 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 2007 reverts to the general fund.

“Perpetual Care” Defined and Specified Exemption Repealed

The term “perpetual care” is defined as 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 is repealed for 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.

The bill also extends the applicability of perpetual care trust fund recordkeeping requirements for cemeteries established after October 1, 2001, and requires nonexempt cemeteries to file a copy of trust reports with the Office of Cemetery Oversight.

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 cemeterian, registered seller, and permit holder. The director’s designee may also review and attempt to negotiate settlement of complaints by consumers against registered cemeterians 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 2008, 2009, and 2010 on the implementation of recommendations contained in the sunset evaluation report dated January 2007.

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 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) and is one of approximately 70 entities currently subject to evaluation under the Maryland Program Evaluation Act (sunset law). The sunset law requires DLS to prepare a preliminary evaluation report on each governmental activity or unit subject to review, with a recommendation as to whether further (full) evaluation is necessary. The office is scheduled to terminate July 1, 2007.

The director of the Office of Cemetery Oversight 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 are generally applicable to cemeterians and permit holders. Chapter 348 of 2006 extended the enforcement authority of the director to include any person subject to registration and permit requirements, regardless of whether that person has registered with the office.

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 applies 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, which is 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 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, 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 for burial property, with certain exceptions. A certificate of ownership of a burial lot or crypt under seal of a registered cemeterian or permit holder, has the same effect as a conveyance of real property that is executed, acknowledged, and recorded as required by law.

Perpetual Care

A person who 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. Records related to perpetual care trust requirements may be inspected by the director, the Attorney General or an authorized representative, 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.

Preneed Contracts

A registered cemeterian, permit holder, or other person that sells preneed goods or services is required to keep detailed records of all contracts and all money received. A certain percentage of money received for a preneed 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, and the State's Attorney for the county where the seller does business.

Written Disclosures

A person, at the time of entering into a contract for the sale of burial goods and services must disclose to the buyer in writing: • the itemized cost for each service under the contract; • a list of services incidental to burial that are not covered by the contract; • a statement regarding the cemetery's policy on the use of independent monument companies; and • 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 953 registered cemeterians, burial goods providers, and permit holders.

The bill's provisions implement the recommendations made in *Sunset Review: Update to the 2005 Evaluation of the Office of Cemetery Oversight* (January 2007) conducted by DLS. The office underwent a sunset review in 2005; the report issued at the end of that review made a number of recommendations, including extension of the office's termination date.

SB 387 and HB 862 of 2006 were introduced to extend the office's termination date and implement other changes recommended in the 2005 evaluation. SB 387 passed the Senate, but the House Economic Matters Committee did not take action on either bill. Certain provisions included in these bills were incorporated in Chapter 348 of 2006, which extended the purview of the Office of Cemetery Oversight to include unregistered persons in certain circumstances.

As the office's termination date was not extended in 2006, DLS updated the sunset review. If no action is taken during the 2007 legislative session, the office will terminate July 1.

State Fiscal Effect: Special fund revenues and expenditures would be eliminated and general fund revenues and expenditures would increase 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 would continue to be paid if the office remains a special fund agency in fiscal 2008 and years following. Under the bill, indirect costs of approximately \$65,000 would no longer be assessed. The proposed fiscal 2008 budget for the office is approximately \$318,400 – this amount does not include indirect costs.

Expenditures for the office are primarily personnel related. Direct costs include the full-time salary and benefits for a director, investigator, and administrative aide. In addition, unlike other boards within DLLR's Division of Occupational and Professional Licensing, the salary and benefits for a part-time assistant Attorney General are charged directly to the office. Also included in the direct costs of the office is the hiring of a certified public accountant, on a contractual basis, to review preneed and perpetual care trust reports. Further, direct costs for the office include its apportioned share of DLLR's Division of Occupational and Professional Licensing centralized costs, such as the costs related to the processing of registrations and permits and information systems maintenance. Indirect costs to the office simply cover the office's apportioned costs for departmental services at the Secretary level. Thus, it is assumed that the indirect costs charged to the office are already incorporated in the general fund budget for DLLR.

DLLR advises the bill's changes would not affect the office's budget. However, additional filing and administrative oversight requirements may require additional staffing, in which case an additional position could be requested through the annual budget process. Future year expenditure projections reflect the recent 2.68% rate of growth in the office's budget, exclusive of indirect costs.

Under the bill, special fund revenues would decrease and general fund revenues would increase correspondingly. The estimated revenue of the office in the proposed fiscal 2008 budget is \$400,000, which reflects the fee increase that went into effect in April 2006. The majority of the office's revenue, however, is derived from sales contract fees, which can vary significantly from year to year. In general, the number of sales contracts has been declining, due in part to market saturation and the increasing popularity of cremation.

Variability in sales contract fees and the office's biennial renewal schedule make it difficult to accurately predict future levels of revenue. For purposes of this fiscal note, revenue is assumed to decrease based on trends in sales contract fees. Increases in revenue in even-numbered years reflect the effect of renewal fees. All revenues would accrue to the general fund.

There could be an increase in general fund revenues at the end of fiscal 2007 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.

For purposes of this fiscal note, conversion to general fund status is assumed to coincide with the new fiscal year.

Small Business Effect: Nonregistered and nonpermit holding individuals and cemetery owners, which may include small business owners, would be subject to additional conveyance provisions and cemetery acreage limitations. In certain instances, small business owners may also be subject to additional recordkeeping and filing requirements related to perpetual care.

Additional Information

Prior Introductions: SB 387 and HB 862 of 2006 were introduced to extend the office's termination date and implement other changes recommended in the 2005 evaluation. SB 387 passed the Senate, but the House Economic Matters Committee did not take action on either bill.

Cross File: SB 741 (Senator Middleton, *et al.*) – Finance.

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

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Analysis by: Suzanne O. Potts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510