

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 995

(Delegate Kach)

Health and Government Operations and  
Economic Matters

Finance

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**Regulation of Crematories**

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This bill requires the Office of Cemetery Oversight and the State Board of Morticians and Funeral Directors to establish a process for regulating crematories that provides for registration, issuance of permits, or licensure, as appropriate based on the regulatory entity. A crematory is regulated either by the office or the board based on the crematory's ownership.

By October 1, 2011, the office and the board must adopt identical regulations in numerous specified areas and must determine whether to adopt financial stability requirements for crematories.

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**Fiscal Summary**

**State Effect:** Minimal increase in special fund revenues from registration/permit/licensure fees from the 28 crematories in the State beginning in FY 2012. Future year revenues depend on the frequency of registration/permit/licensure renewal adopted in regulation. Potential minimal increase in general fund revenues due to the imposition of existing penalties. The office and the board can jointly develop regulations and then register/permit/license and inspect crematories with existing resources.

**Local Effect:** Potential minimal increase in expenditures due to imposition of existing incarceration penalty provisions.

**Small Business Effect:** Potential meaningful for operators of crematories depending on the fees established and the extent to which regulations modify existing business practices.

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## Analysis

**Bill Summary:** “Cremation” means the process of reducing human remains to bone fragments through intense heat and evaporation including any mechanical or thermal process. A “crematory” is a building, portion of a building, or structure that houses the necessary appliances and facilities for cremation. “Human remains” means the body of a deceased person or a part of a body or limb that has been removed from a living person, including a body or part of a body or limb in any state of decomposition.

To engage in the operation of a crematory means controlling or managing a crematory, it does not include:

- the practice of funeral direction or the practice of mortuary science;
- assistance in making decisions and filling out forms that are not directly related to cremation;
- obtaining vital statistics signatures, and other information necessary to complete a death certificate;
- transportation of a body to the place of disposition; or
- any other services regarding the disposition of a body that are not directly related to cremation.

The operation or ownership of a crematory incinerator at a licensed medical facility or educational institution is exempt from the bill’s provisions.

The regulatory process established must provide for registration, issuance of permits, or licensure and renewal; applications, including certification of ownership and identification of individuals who will perform cremation; registration, permit, or licensure fees; inspection and oversight; grounds for discipline and penalties; and complaints and hearings. The Director of Cemetery Oversight and the board must adopt identical regulations to implement these processes and ensure public health and safety. Identical regulations must also be adopted to govern cremation containers, holding facilities, authorization forms, waiting periods, delegation of authority, liability, receipts and records, resolution of disputes, prohibition against requiring caskets and embalming, identification of human remains, storage of human remains, hazardous implants, prohibition against simultaneous cremation of more than one person without authorization, inspection and copying of records, approved containers for cremains, disposition of unclaimed cremains, and provision of identification of and updates on individuals performing cremation.

To determine whether the office or the board regulates a crematory, the percentage of ownership interest at a given facility must be assessed by comparing the number of

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registrants or permit holders under the jurisdiction of the Office of Cemetery Oversight to the number of licensees regulated by the State Board of Morticians and Funeral Directors. The office and the board would regulate facilities in which their registrant/permit holders or licensees hold the majority of ownership. Independent (or free-standing) crematories are subject to the jurisdiction of the office.

The Director of Cemetery Oversight may not assess a crematory a per-occurrence cremation fee.

Crematories under the jurisdiction of the Office of Cemetery Oversight are required to hold a permit for the crematory business if the crematory is not a sole proprietorship, and a crematory operator must also be registered with the office.

**Current Law:** The Office of Cemetery Oversight, housed within the Department of Labor, Licensing, and Regulation, regulates cemeteries and associated burial goods sales under the Maryland Cemetery Act. The funeral industry – licensed funeral providers and funeral establishments, including the sale of burial goods by those licensees – is subject to regulation by the State Board of Morticians and Funeral Directors within the Department of Health and Mental Hygiene. Cremation is minimally regulated in Maryland – the Maryland Department of the Environment (MDE) enforces emissions standards; some additional regulation is applicable only to funeral service providers under the Maryland Morticians and Funeral Directors Act.

Only crematories operated by a person or entity licensed by the board (essentially those on funeral establishment grounds) are subject to statutory provisions under the Maryland Morticians and Funeral Directors Act. Limited recordation requirements imposed on such licensees under the Act mandate the placement of a metal or plastic identification tag in a container holding the cremains (cremated remains) and require that a complete file of a cremation be maintained. A licensee or agent of a licensee is also prohibited from indicating that a burial or funeral casket is required for cremation. The board also informally inspects, with permission from the funeral establishment operators, a licensee's on-site crematory during the regularly scheduled annual inspection of the establishment.

All other crematories, including those located on cemetery grounds and independent crematories are subject to only MDE regulatory authority. To operate any crematory in Maryland, the owner must procure separate permits to construct and operate the facility. A valid permit to construct a crematory facility is good for the life of the facility; however, a permit to operate a crematory is subject to a five-year limitation and conditioned on the satisfactory completion of submitting an annual emissions report. The MDE inspector witnesses a cremation during inspection, thereby ensuring that each

facility operates with a functioning retort, more commonly known as a crematorium furnace.

When a complaint regarding crematory emissions is received by MDE, a follow-up inspection is conducted. If necessary, a notice of violation is issued to the crematory operator, and if the violation is not corrected, a corrective order from the Office of the Attorney General is issued.

The Office of Cemetery Oversight assesses a per-contract fee on registered for-profit cemeteries; the bill prohibits a similar pre-occurrence fee from being assessed on registered crematories.

If the Director of Cemetery Oversight finds a person has violated the Maryland Cemetery Act, instead of or in addition to reprimanding a registrant or permit holder, or suspending or revoking a registration or permit, the director may impose a civil penalty of up to \$5,000 for each violation of the Maryland Cemetery Act. Additionally, civil penalties may not exceed \$500 for each day a violation continues past the time set for its correction. Civil penalties collected must be paid into the general fund.

A person who violates any provision of the Maryland Morticians and Funeral Directors Act is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500 and/or imprisonment for up to one year.

**Background:** Nationwide, as well as in Maryland, cremation is growing in popularity. According to the Cremation Association of North America, the percentage of cremations performed nationally and within the State is expected to be almost 33% and 39%, respectively, in 2010.

Bills introduced during the 2001, 2002, and 2003 legislative sessions would have established regulation of crematories in the State through bifurcated oversight by the office and the board. Other proposals to regulate crematories solely by the board have been considered in the 2000, 2003, and 2009 legislative sessions.

In preliminary and full program evaluations of the Office of Cemetery Oversight in 2004 and 2005 as well as a preliminary evaluation of the State Board of Morticians in 2005, the Department of Legislative Services (DLS) noted Maryland law provides for very limited oversight of crematories operating in the State, primarily through MDE regulations regarding emissions or exhaust for crematories. In the 2005 evaluations, DLS recommended that the office, the board, and MDE collaborate to jointly develop legislation addressing crematory oversight. However, the Office of Cemetery Oversight was not involved in developing regulations that were proposed to the Administrative, Executive, and Legislative Review (AELR) Committee during the 2006 legislative

interim for the board to inspect crematories on funeral establishment grounds, among other things. These regulations were ultimately not adopted.

In a 2007 full evaluation of the State Board of Morticians and Funeral Directors, DLS modified its earlier recommendations in recognition of the board's proactive stance on crematory inspection and the fact that 23 of the 28 crematories in Maryland are located on funeral establishment grounds. Thus, DLS recommended that the board be required to inspect all Maryland crematories annually under a uniform crematory statute that imposes the same inspection requirements on all crematories regardless of location. The General Assembly did not act on that recommendation when the board's termination date was extended during the 2008 legislative session; however, SB 910 of 2009 would have required crematories to be licensed by the board.

This bill is consistent with earlier DLS recommendations that called for a consistent approach to regulation of crematories in Maryland.

**State Revenues:** Under the bill, 23 crematories are under the jurisdiction of the State Board of Morticians and Funeral Directors, and the remaining 5 crematories are under the jurisdiction of the Office of Cemetery Oversight. Although the board and the office have not established licensure/permit/registration fees or determined a renewal cycle, DLS advises that a biennial renewal cycle is likely, which would subject crematories to a licensure/permit/registration fee every other year. DLS assumes that special fund revenues from licensing/permit/registration fees begin in fiscal 2012 as the bill requires the office and the board to jointly develop and adopt regulations by October 1, 2011. *For illustrative purposes only*, if the board and the office set a licensure/permit/registration fee at \$250, special fund revenues would increase by \$5,750 and \$1,250 for the board and the office, respectively. This estimate assumes only one license/permit/registration per known crematory. Future years reflect biennial renewal of all crematory licenses/permits/registrations at the same fee level.

General fund revenues may increase minimally beginning in fiscal 2012 due to the imposition of existing penalty provisions.

**State Expenditures:** The board and the office can develop regulations and license/permit/register and inspect the 28 crematories in the State with existing resources.

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### Additional Information

**Prior Introductions:** Bills to regulate crematories have been considered in the 2000, 2001, 2002, 2003, and 2009 legislative sessions. SB 910 of 2009 would have required licensure by the State Board of Morticians and Funeral Directors; it was amended in the

Senate and reported unfavorable by the House Health and Government Operations Committee. HB 13 of 2003, SB 143/HB 326 of 2002, and HB 906 of 2001 would have required regulation by either the Office of Crematory Oversight or the then State Board of Morticians, depending on ownership. SB 484/HB 756 of 2003 and HB 1085 of 2000 would have required licensure by the State Board of Morticians.

**Cross File:** None.

**Information Source(s):** Maryland Department of the Environment; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Secretary of State; Department of Legislative Services

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