

**Department of Legislative Services**  
 Maryland General Assembly  
 2016 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 949 (Delegate Kipke)  
 Health and Government Operations

**Cemeteries - Perpetual Care Trust Fund - Loan of Principal for Capital Expenditures**

This bill authorizes a percentage of the principal of a perpetual care trust fund – up to 2% of the value of the fund for any specific expenditure – to be loaned to the person that established the perpetual care trust fund to be used for capital expenditures for the repair of mausoleum roofs and roads. The length of the loan may be up to five years, and the annual interest rate must be 6%. A person that receives a loan must include in the required trust report filed with the Office of Cemetery Oversight a description of the loan, including the amount and terms of the loan and a description of the capital expenditures for which the loan was made.

**Fiscal Summary**

**State Effect:** Special fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$117,300 in fiscal 2017 for staff necessary to ensure compliance with the requirements for loans taken under the bill. Future year expenditures reflect annualization and the elimination of one-time costs. Revenues are not affected.

| (in dollars)   | FY 2017     | FY 2018     | FY 2019     | FY 2020     | FY 2021     |
|----------------|-------------|-------------|-------------|-------------|-------------|
| Revenues       | \$0         | \$0         | \$0         | \$0         | \$0         |
| SF Expenditure | 117,300     | 145,900     | 151,600     | 157,700     | 164,000     |
| Net Effect     | (\$117,300) | (\$145,900) | (\$151,600) | (\$157,700) | (\$164,000) |

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

**Local Effect:** None.

**Small Business Effect:** Meaningful. Small businesses that are cemeteries have access to a previously unavailable source of funding for specified capital expenditures; however, the bill opens these businesses to additional risks of depleting the assets in their perpetual care trust funds if they are unable to repay the loans.

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## Analysis

**Current Law:** Two types of trust funds related to cemetery services are regulated by the Office of Cemetery Oversight in DLLR: perpetual care trust funds and preneed trust accounts. Generally, sellers of perpetual care and preneed services must place in trust a portion of the cost or sale price of the goods or services shortly after the time of sale.

“Perpetual care” means the maintenance, including the cutting of grass abutting memorials or monuments, as well as the administration, supervision, and embellishment of a cemetery and its grounds, roads, and paths. Additionally, it includes the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.

The *income* from the perpetual care trust fund:

- must be used only for the perpetual care of the cemetery, including (1) the maintenance, administration, supervision, and embellishment of the cemetery and its grounds, roads, and paths and (2) the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery; and
- may not be used to care for memorials or monuments.

Realized capital gains of a perpetual care trust fund are not income of the perpetual care trust fund and must be deposited in the perpetual care trust fund as principal of the perpetual care trust fund.

Persons subject to the trust requirements must submit a report to the Director of Cemetery Oversight after the end of each calendar year.

**Background:** The Office of Cemetery Oversight was established by Chapter 675 of 1997. The office registers and regulates the cemetery and burial goods industry in the State under the leadership of a director. An advisory council serves as a source of expertise for the director and provides insight into the needs of the business community and the consumers served by the industry. The Cemetery Oversight Fund was established as a continuing, nonlapsing special fund to cover the documented direct and indirect costs of fulfilling the statutory and regulatory duties of the office.

**State Expenditures:** DLLR requires additional staff to (1) review the additional financial information provided by cemeteries that elect to use funds for the purposes authorized by the bill, including repayment of the loans, and (2) verify that the funds are used only for authorized purposes. Therefore, special fund expenditures for DLLR increase by \$117,328 in fiscal 2017, which accounts for the bill's October 1, 2016 effective date. This estimate reflects the cost of hiring one certified public accountant and one investigator. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

|   |                  |
|---|------------------|
| Positions                               | 2.0              |
| Salaries and Fringe Benefits            | \$107,699        |
| Other Operating Expenses                | <u>9,629</u>     |
| <b>Total FY 2017 State Expenditures</b> | <b>\$117,328</b> |

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Special fund expenditures further increase to the extent that DLLR requires additional legal resources; however, that cost is not reflected in the above estimate.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 897 (Senator Klausmeier) - Finance.

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

**Fiscal Note History:** First Reader - February 22, 2016  
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