

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 5

(Delegate Krebs)

Health and Government Operations

Finance

Cemeteries - Perpetual Care - Distribution From Perpetual Care Trust Fund

This bill increases the amount that may be withdrawn from a perpetual care trust fund, subject to specified conditions. Distributions from a perpetual care trust fund must still be used for the same purpose – exclusively for perpetual care of the cemetery – as under current law. The Director of the Office of Cemetery Oversight may limit or prohibit a fund balance distribution authorized under the bill for specified reasons. By December 1, 2027, the office must report to specified committees of the General Assembly on the number of cemeteries that have selected an alternative distribution method under the bill, the annual investment performance of the related trust funds, and any recommendations for legislation.

Fiscal Summary

State Effect: General fund revenues may increase minimally from the taxation of realized capital gains beginning in FY 2022. The Maryland Department of Labor (MDL) can handle the bill's requirements with existing budgeted resources.

Local Effect: Local revenues may increase from realized capital gains. The overall effect is likely minimal on any particular local government. The bill does not otherwise materially affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Options for Distributions from Perpetual Care Trust Funds

By default, a trustee must distribute all net income of a perpetual care trust fund to a cemetery on a monthly basis. Alternatively, a cemetery may select as the method of distribution from a perpetual care trust fund on a monthly, quarterly, semiannual, or annual basis, either:

- *Net Income Option:* which under the bill includes interest, dividends, and does not explicitly exclude realized capital gains, as described below; or
- *Fund Balance Option:* an amount up to 4% of the average of the end-of-year fair market value of the perpetual care trust fund for the preceding three calendar years, subject to specified conditions discussed below.

For purposes of distributions from perpetual care trust funds, “net income” includes interest and dividends. A related provision excluding realized capital gains from a perpetual care trust fund’s income is repealed, although such gains must still be deposited into the trust fund as principal. A perpetual care fund trustee is required to pay capital gains taxes from the principal of the perpetual care trust fund.

Notification and Approval

If a cemetery selects either of the above alternative distribution options, it must notify both the fund trustee and the Director of the Office of Cemetery Oversight at least 60 days before the date the distribution will take effect. The fund trustee must then provide a statement to the director attesting that the cemetery’s selection of an alternative distribution method is reasonably expected to result in sufficient protection of the perpetual care trust fund’s principal. The notification must include a copy of the investment policy statement for the trust and the planned initial distribution amount. A cemetery’s selection of either of the two alternative distribution methods is contingent on the approval of the director; the director must provide written notice of approval or disapproval within 30 days. The method of distribution must remain in effect until the cemetery notifies both the fund trustee and the director in writing that the cemetery has selected a different method of distribution.

Fund Balance Distribution

If a cemetery selects the fund balance distribution option, the fund trustee:

- must submit an annual attestation to the director that the distribution option is reasonably expected to result in sufficient protection of the perpetual care trust fund's principal;
- may not reduce the amount of the distribution by any taxes or fees;
- must adopt an investment policy that both provides for a balanced portfolio, including a reasonable amount of fixed-income securities, and supports the growth of the perpetual care trust fund; and
- must use this distribution option if the fair market value of the perpetual care trust fund exceeds a specified amount, or, if it does not, must distribute all net income of the perpetual care trust fund to the cemetery on a monthly basis (*i.e.*, the default method) for the remainder of the calendar year.

The Director of Cemetery Oversight may limit or prohibit a fund balance distribution if the director believes that:

- based on a review of the perpetual care trust fund submitted by the trustee, investment returns and distribution practices have not resulted in sufficient protection of the perpetual care trust fund's principal; or
- the trustee does not have sufficient knowledge and expertise to administer the perpetual care trust fund in a manner that supports the growth of the perpetual care trust fund.

Current Law: Two types of trust funds related to cemetery services are regulated by the Office of Cemetery Oversight in MDL: 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, as defined above; 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.

Office of Cemetery Oversight

The Office of Cemetery Oversight 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 Effect: Since fund trustees are responsible for submitting attestations of perpetual care fund's financial health, MDL can handle the bill's requirements with existing budgeted resources. General fund revenues increase beginning as early as fiscal 2022 to the extent that cemeteries elect to realize capital gains, subjecting that amount to taxation. The amount cannot be reliably estimated at this time, but is expected to be minimal.

Small Business Effect: Small businesses that are cemeteries have access to a previously unavailable source of funding for perpetual care – realized capital gains and/or fund balance. However, the bill exposes these businesses to additional risks of depleting the assets in their perpetual care trust funds.

Additional Information

Prior Introductions: HB 243 of 2020, a similar bill, passed the House with amendments and was referred to the Senate Finance Committee, but no further action was taken. Its cross file, SB 483, received a hearing from the Senate Finance Committee, but no further action was taken. SB 434 of 2019, a similar bill, received a hearing from the Senate Finance Committee, but no further action was taken. Its cross file, HB 489, received a hearing from the House Health and Government Operations Committee, but no further action was taken.

Designated Cross File: SB 192 (Senator West) - Finance.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

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