

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 394 (Chair, Health and Government Operations Committee)
Health and Government Operations Finance

Office of Cemetery Oversight - Sunset Extension and Program Evaluation

This bill extends the termination date for the Office of Cemetery Oversight by 10 years to July 1, 2023, and requires an evaluation of the office by July 1, 2022. It includes many of the statutory recommendations developed by the Department of Legislative Services (DLS) during the 2011 sunset evaluation, which address (1) the structure and function of the office and the Advisory Council on Cemetery Operations; (2) registration and permit requirements for cemeteries in the State; (3) regulation of perpetual care and preneed sales; (4) consumer complaints and outreach; and (5) the office's finances.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Special fund revenues and expenditures for the office and advisory council are maintained beyond FY 2013. The FY 2013 budget includes \$429,900 for office operations. The bill's reporting requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law:

Structure and Function of the Office and the Advisory Council

Current Law: The Advisory Council on Cemetery Operations consists of 11 members appointed to three-year terms. The advisory council must be convened at least once per year but may meet more often, as necessary.

The Bill: The council expands to 12 members, to include 1 representative from a crematory, and must be convened at least four times per year. The advisory council must respond to issues raised by the director in the annual report to the General Assembly regarding noncompliance, registration, permitting, and consumer complaints, and develop a plan to study ongoing issues during the year following the issuance of the report. The director must deliver to each member, at the time of appointment of new members and before reappointment of existing members, the paperwork necessary to disclose any interest or employment held by the member at the time of appointment.

Registration and Permit Requirements

Current Law: A cemetery registration is not transferrable. The office's registration and permitting requirements do not apply to cemeteries owned or operated by a local government, religious organization, State veterans' agency, or a nonprofit created by the General Assembly before 1900.

The Bill: A cemetery registration may not be transferred from one person to another, but it may be transferred for the same individual from one cemetery to another. A cemetery owned or operated by a private family that does not conduct public sales is also excluded from registration and permitting requirements. The director must include in the annual report the number of registrants and permit holders as of the end of the fiscal year for each licensing category and deliver the report to each member of the advisory council.

Consumer Complaints and Outreach

Current Law: The annual report must include the number, status, and nature of complaints resolved in a timely manner. At the time of entering into a contract with a consumer for the sale of burial goods or services, businesses regulated by the office must disclose in the *contract* (1) the itemized cost for each service performed under the contract; (2) a list of incidental services not covered in 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 of the office. The disclosure must be signed and dated by the consumer.

The Bill: The director must report the number of inquiries received in addition to the number, status, and nature of complaints. Further, the director must report the type of purchase, focus of dissatisfaction, and resolution type for both complaints and inquiries. The name, address, and telephone number of the office must be disclosed on a *separate form* from each contract for burial goods or services, which must be separately signed and dated by the consumer.

Finances

Current Law: An applicant for a permit must submit an application and typically pay an application fee of \$200.

The Bill: In addition to an application and fee, an applicant for a renewal permit must submit documentation verifying the number of sales contracts subject to the existing sales contract fee (\$10 per sales contract of \$250 or more) entered into within the business' last two fiscal years.

Regulation of Perpetual Care and Preneed Sales

Current Law: Preneed burial contract provisions apply to all cemeteries in Maryland. However, they do not apply to (1) the sale of burial space; or (2) a preneed contract made by an individual in connection with practicing mortuary science. Likewise, cemeteries that have less than one acre for burial space are excluded. The owner of a private family cemetery that does not conduct sales is not expressly exempted from the preneed burial contract requirements.

Conversely, cemeteries owned and operated by a county, municipal corporation, church, synagogue, specified religious or nonprofit groups, a State veterans' agency, or a family that does not conduct public sales are excluded from perpetual care trust requirements. A cemetery subject to perpetual care trust requirements must initially deposit \$10,000, \$25,000, or \$50,000 into a perpetual care trust, depending on the size of the cemetery and whether or not it sells burial goods. In addition, the cemetery must deposit at least 10% of the actual selling price of each right of interment, or, if the burial space is sold at a discount or at no cost, at least 10% of the imputed cost of the fair retail value, and additional specified funds over time.

Persons subject to trust requirements must submit an annual report to the director detailing the balances in each perpetual care trust fund and preneed trust fund at specified dates, and the amount of money received, deposited, and spent during the reporting year. Each report must be certified by a CPA retained by the cemetery.

The Bill: The preneed sale of burial goods or services by a private family cemetery that does not conduct public sales of burial goods or services is excluded from regulation by the office.

The annual report to the director for perpetual care trusts must include specified information, including (1) the beginning and ending balance of the trust account, an investment portfolio summary, and a transaction summary; (2) any trust account earnings, deposits, total receipts, and administrative expenses; (3) disbursements for cemetery care, maintenance, administration, and embellishment; and (4) other and total disbursements. Likewise, the annual report to the director for preneed trusts must include the same additional information; however, instead of encompassing disbursements related to cemetery care and maintenance, it must include information pertaining to withdrawals due to services performed and cancelled contracts.

The director may also request any additional documentation deemed necessary from a person subject to perpetual care or preneed trust requirements, and that person must provide such documentation.

Additional Uncodified Requirements

Uncodified language also requires the advisory council to (1) develop a consumer outreach plan; (2) study recordkeeping practices for cemeteries in relation to best practices and disaster preparedness; and (3) develop a legislative proposal on recordkeeping requirements. Further, the director and advisory council must (1) collaborate on the development of orientation materials for new council members; (2) study the issue of the increasing rate of cremations; and (3) update the office newsletter and ensure it is updated on a regular basis. The office must report to specified committees of the General Assembly on its progress in these areas by October 2013.

Background:

Maryland Program Evaluation Act

The Office of Cemetery Oversight is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review” as most entities evaluated are also subject to termination, including the office, which is scheduled to terminate July 1, 2013. A copy of the DLS sunset report on the Office of Cemetery Oversight can be found at <http://dls.state.md.us/Content.aspx?page=104>.

The review process traditionally begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The office last underwent a full evaluation as part of sunset review in 2005. The sunset bill did not pass the General Assembly in 2006 and was reconsidered during the 2007 session. An update to the 2005 evaluation was issued in January 2007 to assess the continued need for the evaluation's recommendations. Chapter 348 of 2007 extended the office's termination date by five years to July 1, 2013, and required a full sunset evaluation of the office on or before July 1, 2012, without preliminary evaluation.

Office of Cemetery Oversight

The office was established by Chapter 675 of 1997, and registers and regulates the cemetery and burial goods industry in the State under the leadership of a director. The 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.

Structure and Function of the Office and the Advisory Council

As required by Chapter 450 of 2010, the office has adopted regulations for crematories in conjunction with the State Board of Morticians and Funeral Directors. The new regulations will bring under the regulatory authority of the office free-standing crematories and crematories in which an office permit holder or registrant holds the majority of ownership. The regulations were submitted to the Joint Committee on Administrative, Executive, and Legislative Review in December 2011 and are expected to be published for comment in spring 2012. Therefore, DLS recommended that a representative of crematories be added as a seventh industry member of the advisory council.

DLS also noted that members of the advisory council must be adequately informed prior to their appointment of the requirements imposed on them by the Public Ethics Law, and recommended that the director be required to deliver to each member of the council the paperwork necessary to disclose any interest or employment held by the member at the time of appointment. Finally, DLS recommended that the advisory council study recordkeeping practices for cemeteries in relation both to best practices and disaster preparedness, with the intention of developing legislation to address this issue.

Registration and Permit Requirements

The office does not maintain historical licensing records; thus, DLS recommended the director maintain a complete listing of the registration and permit numbers and include the counts as of June 30 in the office's annual report.

The office has not required that the owner of a family cemetery (which is not expressly exempted) register with the office as a cemeterian. The office has assumed that the legislature intended that the office regulate only business entities, rather than private family cemeteries. DLS recommended that the specific exemption for family cemeteries that do not conduct public sales from the registration, permit, and preneed burial contract requirements be added to the Maryland Cemetery Act.

Further, in order to continue to streamline the registration process, DLS recommended that sales counselors be authorized to transfer a registration from one business to another business without requiring a new registration to be issued by the office.

Regulation of Perpetual Care and Preneed Sales

In the full evaluation, DLS found that the director was pressed to review all of the approximately 80 reports received annually and recommended that the office procure a part-time, contractual accountant to assist in reviewing the reports. In addition, DLS recommended that any cemetery, other than a veterans' cemetery, at which perpetual care is stated or implied, comply with the perpetual care trust provisions. This would repeal the exemption for certain cemeteries, including local government or religious organizations, offering to sell a burial lot or right.

Consumer Complaints and Outreach

The office has a dual role as a regulatory body and as the entity responsible for investigating and mediating consumer complaints. In the evaluation, DLS recommended that the disclosure of the name, address, and telephone number of the office be made on a separate form from preneed contracts, and that statute should be amended to specifically authorize the director or the director's designee to confer with the advisory council on complaint processing and resolution.

In addition, DLS recommended that the annual report distinguish the type of purchase, focus of dissatisfaction, and type of resolution for both complaints and inquiries received. The report's current combination of complaints and inquiries makes it difficult to determine data trends for complaints only. Finally, DLS noted that the director must comply with statutory requirements and develop a schedule and standard for the prompt and timely processing and resolution of each complaint received by the office.

Finances

DLS found that the most significant measure that DLLR has implemented to ensure the office's fiscal solvency was an increase in sales contract fees. Of the total special fund revenue that the office reported it collected between fiscal 2007 and 2011, 77% was attributable to sales contracts. Currently, cemeteries self-report the number of applicable contracts without any explicit requirement for supporting documentation. Therefore, DLS recommended that the office's permit renewal forms be changed to require supporting documentation for the cemetery's reported number of applicable sales contracts.

Finally, due to a multitude of factors, including the relatively low cost of cremations and the current economic climate, cremations in the State are increasing at a rate of 1% or 2% every year. DLS recommended that the advisory council study this issue and the potential effect on office finances.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, SB 282 (Chair, Finance Committee – Finance) is essentially identical.

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

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