

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013

A Bill

SENATE BILL 462

4
5 By: Senator J. Dismang
6 By: Representative Perry

For An Act To Be Entitled

9 AN ACT TO REVISE THE CEMETERY ACT FOR PERPETUALLY
10 MAINTAINED CEMETERIES; AND FOR OTHER PURPOSES.

Subtitle

14 TO REVISE THE CEMETERY ACT FOR
15 PERPETUALLY MAINTAINED CEMETERIES.

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17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code § 20-17-1006(1), concerning the authority of
21 the Arkansas Cemetery Board, is amended to read as follows:

22 (1) ~~(A) Conduct at any time and from time to time such reasonable~~
23 periodic, special, or other examination of ~~any a~~ a cemetery or cemetery
24 company, including, ~~but not limited to,~~ without limitation an examination of
25 the physical condition or appearance of the cemetery, the financial condition
26 of the company and any trust funds maintained by the company, and ~~such~~ other
27 examinations as the board or Securities Commissioner deems necessary or
28 appropriate in the public interest.

29 ~~(B) The examinations shall be made by~~ examination shall be
30 carried out by:

31 ~~(i) members~~ Members or representatives of the board;
32 ~~or by~~

33 (ii) a A certified public accountant or registered
34 public accountant as authorized in § 20-17-1007; or

35 (iii) The State Securities Department;



1 SECTION 2. Arkansas Code § 20-17-1007(a), concerning examinations of
2 cemeteries, is amended to read as follows:

3 (a)(1)(A) ~~Each~~ A cemetery company examined in accordance with § 20-17-
4 1006 shall pay ~~to~~ the Arkansas Cemetery Board ~~a fee for each~~ for the
5 examination ~~as the board shall prescribe by rule;~~

6 (i) Sixty dollars (\$60) per day for each examiner
7 who conducts the examination; and

8 (ii) The amount necessary to reimburse the travel,
9 meal, and lodging expenses of each examiner.

10 (B) In addition, the cemetery company shall pay to the
11 board the amount of expenses and stipends paid by the board to any board
12 member examining the physical condition or appearance of a cemetery when the
13 examination is ordered by the board on its own motion or on request of an
14 interested individual.

15 (2) ~~However, all examinations shall be~~ An examination shall be
16 conducted by at least one (1) examiner employee of the State Securities
17 Department or board member, ~~and the examinations shall be conducted only~~
18 ~~pursuant to an order of the board.~~

19
20 SECTION 3. Arkansas Code § 20-17-1008, concerning application for a
21 permit, is amended to add an additional subsection to read as follows:

22 (e) The board may for good cause waive all or part of an application
23 requirement of this section if an applicant is a state, city, or municipal
24 government, or nonprofit organization as defined by the Internal Revenue
25 Code, 26 U.S.C. § 501(c)(3).

26
27 SECTION 4. Arkansas Code § 20-17-1013(a), concerning permanent
28 maintenance funds, is amended to read as follows:

29 (a)(1)(A) The permanent maintenance fund is ~~declared to be~~ a trust
30 fund for the purpose of administration, care, and maintenance of the
31 cemetery, including lots, graves, spaces, crypts, niches, and burial rights,
32 ~~or otherwise.~~

33 (B) The principal of the permanent maintenance fund shall
34 be preserved.

35 (2)(A) The net income generated from the investment of the
36 principal of the permanent maintenance fund shall be paid to and ~~be~~

1 ~~exclusively used and~~ expended by the owners, managers, ~~or~~ officers, ~~and or~~
 2 directors of the cemetery company exclusively for the care and maintenance of
 3 the cemetery, including the payment of taxes and administrative expenses of
 4 maintaining the fund and for no other purpose.

5 (B) A cemetery company may add unused net income to the
 6 principal of the permanent maintenance fund.

7 (3) ~~The~~ Except and provided in subdivision (a)(4) of this
 8 section, the principal of the permanent maintenance fund shall be invested
 9 and remain invested in ~~such~~ securities and funds ~~as are~~ permitted by the laws
 10 of Arkansas for the investment of policy reserves of life insurance companies
 11 ~~as set forth in~~ under § 23-60-101 et seq., and in the common trust funds of
 12 state or national banks.

13 (4) ~~(A) However, any~~ A permanent maintenance fund having assets
 14 of more than two hundred fifty thousand dollars (\$250,000) may invest not
 15 more than fifty percent (50%) of its assets in nonassessable common stocks
 16 ~~which are~~ listed on a national securities exchange, preferred stocks meeting
 17 the requirements of § 23-63-815, and investment trust securities meeting the
 18 requirements of § 23-63-820, ~~and.~~

19 ~~(B) the~~ The diversification restrictions of § 23-63-805
 20 ~~shall do~~ not apply to investments in investment trust securities.

21 (5) In investing these funds, the trustee shall exercise the
 22 judgment and care under the circumstances then prevailing which persons of
 23 prudence, discretion, and intelligence exercise in management of their own
 24 affairs, not in regard to speculation, but in regard to the permanent
 25 disposition of their funds, considering the probable income and capital
 26 appreciation as well as the probable safety of ~~their~~ the capital.

27 (6)(A) For purposes of this section, no more than fifty percent
 28 (50%) of annual realized net capital gains on investments bought or acquired
 29 after January 1, 2013, may be considered income and used according to
 30 subdivision (a)(2) of this section.

31 (B) All other net capital gains on investments shall be
 32 added to principal.

33
 34 SECTION 5. Arkansas Code § 20-17-1014(c), concerning trustees of
 35 permanent maintenance funds, is amended to add an additional subsection to
 36 read as follows:

1 (c)(1) The board may require a trustee who fails to protect the
 2 principal of the permanent maintenance fund under § 20-17-1013 to pay an
 3 additional contribution to the permanent maintenance fund of twenty five
 4 dollars (\$25.00) per day for each day that the principal is deficient.

5 (2) The additional contribution made under subdivision (c)(1) of
 6 this section shall not exceed a total of one thousand dollars (\$1,000) for a
 7 continuous violation.

8
 9 SECTION 6. Arkansas Code § 20-17-1015(c)(3), concerning an annual
 10 report of a permanent maintenance fund, is amended to read as follows:

11 (3) ~~Failure by~~ If the trustee ~~to make a~~ does not timely ~~filing~~
 12 ~~of file~~ the annual report required by subsection (a) of this section ~~shall be~~
 13 ~~grounds for,~~ the board may require the trustee to pay an additional
 14 contribution to the permanent maintenance fund of no more than fifty dollars
 15 (\$50.00) per day until the report is filed with the board.

16
 17 SECTION 7. Arkansas Code § 20-17-1023(c)(1), concerning an annual
 18 report on the condition of a cemetery, is amended to read as follows:

19 (c)(1) ~~Failure by~~ If the cemetery company ~~to make a timely filing of~~
 20 ~~does not timely file~~ its annual report ~~shall be grounds for,~~ the board may
 21 require the cemetery company to pay an additional contribution to the
 22 permanent maintenance fund of no more than fifty dollars (\$50.00) per day
 23 until the report is filed with the board.

24
 25 SECTION 8. Arkansas Code § 20-17-1027(b), concerning duties of the
 26 State Securities Department, is amended to add an additional subdivision to
 27 read as follows:

28 (15) Performing regular audits or examinations of perpetual care
 29 cemeteries.

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