

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 462

By: Senator J. Dismang
By: Representative Perry

For An Act To Be Entitled

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

Subtitle

TO REVISE THE CEMETERY ACT FOR
PERPETUALLY MAINTAINED CEMETERIES.

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

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

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

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

- (i) ~~members~~ Members or representatives of the board;
- ~~or by~~
- (ii) ~~a~~ A certified public accountant or registered public accountant as authorized in § 20-17-1007; or
- (iii) The State Securities Department;



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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