
Sunset Review: Evaluation of the Office of Cemetery Oversight

**Presentation to the
Senate Finance Committee**

**Department of Legislative Services
Office of Policy Analysis
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Presentation Overview

- The office and advisory council
 - roles
 - membership
- Registration and permitting requirements
 - trends
 - recordkeeping
- Regulation of perpetual care and preneed sales
- Complaint processing and resolution
- Office finances

Death Care Industry

- Death care industry includes the funeral industry, cemeteries, burial goods providers, and crematories
- Funeral industry regulated by the State Board of Morticians and Funeral Directors in the Department of Health and Mental Hygiene (DHMH)
- The Office of Cemetery Oversight regulates cemeteries and burial goods providers
- Board and office share regulation of crematories

Origins of the Office

- Chapter 209 of 1996 created the Task Force to Examine the State's Cemetery and Funeral Industry
- The task force recommended creating the Office of Cemetery Oversight in Department of Labor, Licensing, and Regulation (DLLR) and the Advisory Council on Cemetery Operations

Office and Advisory Council

- Office staff consists of a director, investigator, administrative assistant, and part-time assistant Attorney General
- Advisory Council on Cemetery Operations serves as a source of expertise for the director
- The council consists of 11 members:
 - 3 registered cemeterians representing the for-profit cemetery industry;
 - 1 registered cemeterian representing a nonprofit cemetery;
 - 1 registered seller from a monument company;
 - 1 representative from a religious cemetery; and
 - 5 consumers

Office Should Be Continued

- Regulation of cemeteries and burial goods businesses continues to be of great importance in serving the residents of the State
- Registration and permitting ensure that cemetery consumers are dealing with professionals and are protected in cemetery transactions
- Oversight of preneed and perpetual care trusts ensures that the expensive investments made by consumers are protected

Recommendation 1 (pg. 4): Statute should be amended to continue the Office of Cemetery Oversight and to extend its termination date by 10 years to July 1, 2023. Additionally, uncodified language should be adopted requiring the office to report to the Senate Finance and House Health and Government Operations committees, on or before October 1, 2013, on the implementation status of nonstatutory recommendations made by the Department of Legislative Services that are adopted by the committees

Representation for Crematories

- Office has drafted regulations for crematories in conjunction with the State Board of Morticians and Funeral Directors
- Office will regulate free-standing crematories and crematories in which an office permit holder or registrant holds majority ownership

Recommendation 2 (pg. 10): Statute should be amended to add a representative of crematories as a seventh industry member to the Advisory Council on Cemetery Operations, creating a 12-person council

Advisory Council Has a Limited Role

- Director gets advice from the council before adopting regulations and before adopting a code of ethics (required by statute)
- Council assists director in formulating and responding to legislation
- Council has been directed to study issues raised in sunset evaluations
- Council has no authority over licensing or complaints

Communication Between Office and Council Must Be Improved

- Council's expertise has been underutilized

Recommendation 3 (pg. 12): Statute should be amended to increase the minimum number of advisory council meetings to four meetings per year, and additional meetings should continue to be authorized as necessary. The new director of the office should make every effort to attend advisory council meetings to best receive advice from the council

Recommendation 4 (pp. 12-13): Statute should be amended to require that the director provide copies of the office's annual noncompliance action plan report and annual complaint report to the members of the advisory council each year. The advisory council should respond to any issues raised by the director in the reports and develop a plan to study any ongoing issues during the following year

Advisory Council Membership Is Changing

- Many members have served since the advisory council was created – several also served on the task force
- During the course of the evaluation, three members of the council resigned and one passed away
 - Resignations were related to ethics requirements
- The office has not yet developed orientation materials for new members

Provide Information to New Members

Recommendation 5 (pg. 13): The director and advisory council should collaborate on the development of orientation materials for new members appointed to the council

Recommendation 6 (pg. 14): Members of the advisory council must be adequately informed *prior to their appointment of the requirements imposed on them by the Public Ethics Law*. Statute should be amended to require the director 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. The paperwork should be delivered at the time of appointment and prior to reappointment. DLLR should also work with the office and other boards and commissions to ensure that all members are regularly apprised of the ethics requirements that continue to apply to them. These requirements should be incorporated into the orientation materials developed by the director and advisory council

Consumer Outreach Should Be Improved

- In addition to regulation, the office investigates and mediates consumer complaints
- Effectiveness is limited by low profile
- Current efforts to increase awareness include:
 - disclosure form on contracts for burial goods and services
 - information pamphlet and office newsletter

Consumer Outreach Should Be Improved (Cont.)

Recommendation 7 (pg. 14): Statute should be amended to require that the disclosure of the name, address, and telephone number of the office be made on a separate form, which must be independently signed and dated by the consumer. Statute should require that the consumer be provided a copy of this form at the time the consumer is provided a copy of the contract

Recommendation 8 (pg. 15): The new director and a committee formed of members of the advisory council should update the newsletter and develop a plan to ensure that the newsletter continues to be updated on a regular basis

Recommendation 9 (pg. 16): The advisory council should develop a plan to improve consumer outreach. The plan should include an approach to disseminating the consumer information pamphlet to key locations around the State, such as nursing homes, churches, the offices of estate lawyers, consumer protection agencies of every county, and other locations

Registration and Permit Requirements

- Individuals must be registered with the office to:
 - engage in the operation of a cemetery or crematory;
 - sell burial goods; or
 - act as a sales counselor
- Cemeteries operated by a corporation, limited liability company, or partnership must have a permit from the office (sole proprietorships do not need a permit but must be registered)

Qualifications

- An applicant for a registration must be 18 years old, of good character and reputation, and affiliated with a business that is financially stable
- To qualify for a permit, the business must designate a responsible party who is registered with the office, provide a list of the affiliated locations and employees, and demonstrate financial stability

Entities Exempt from Registration and Permit Requirements

- Bona fide religious nonprofit cemeteries
- Nonprofit organization created before 1900 by an act of the General Assembly
- Local government-owned cemeteries
- Veterans cemeteries

Number of Registrations and Permits

<u>Date</u>	<u>Current</u>	<u>Expired</u>	<u>Total</u>
6/22/06	948	1,209	2,157
5/2/07	979	1,490	2,469
6/9/08	1,107	1,754	2,861
6/10/09	1,346	2,020	3,366
5/28/10	1,333	2,342	3,675
6/13/11	1,284	2,756	4,040

Permit Recordkeeping Can Be Improved

Recommendation 10 (pg. 20): Statute should be amended to require the director to maintain a complete listing of the registration and permit numbers, including the registration and permit counts for each licensing category, and include the counts as of June 30 of that year in the office's annual report submitted to the General Assembly

Cemetery Inventory Reveals Many Family Cemeteries

- Chapter 348 of 2007 (sunset bill) required director to conduct an inventory of known burial sites
 - Director must use inventory to determine the rate of compliance with registration, permit, and reporting requirements
 - Inventory lists 3,098 family cemeteries

Recommendation 11 (pp. 22-23): Statute should be amended to specifically exempt family cemeteries that do not conduct public sales from the registration and permit, perpetual care, and preneed burial contract requirements of the Maryland Cemetery Act. If this recommendation is not adopted by the General Assembly, the office should require the owner of a family cemetery to register with the office as a registered cemeterian and ensure compliance of each family cemetery with the perpetual care and preneed burial contract requirements of the Act

Registration Process Is Being Streamlined

- Previously, registration process could take weeks
 - Beginning in August 2011, registration renewal has been streamlined to days
 - Office hopes to introduce online licensing in the future – beginning with renewals
- Transfer of registration is not currently allowed

Recommendation 12 (pg. 24): Statute should be amended to authorize an individual to transfer a registration from one business to another business without requiring a new registration to be issued by the office. The office should set an appropriate fee for the transfer and promulgate the fee in regulations

Cemetery Records Are at Risk of Catastrophes

- The nature of the cemetery business requires records to be maintained for very long periods of time
- Records are vulnerable to aging but also to damage from fire, floods, and other natural disasters, as seen with Hurricane Katrina
- Statute requires detailed perpetual care records, but there are no required standards
- Advisory council has looked at recordkeeping issues, but it has not done comprehensive research or developed legislation

Study Recordkeeping Practices

Recommendation 13 (pg. 25): The advisory council should study recordkeeping practices for cemeteries in relation both to best practices and for disaster preparedness, including pandemics and natural disasters, with the intention of developing legislation to address this issue. The advisory council should develop a legislative proposal for introduction no later than the 2014 session. In developing the proposal, the council should determine the categories of cemeteries to which any recordkeeping requirements developed should be applied and should consider the possibility of phasing in requirements to limit the economic impact on cemeteries

Perpetual Care Requirements

- Applicability of Requirements/Initial Deposit
 - Each sole proprietor registered cemeterian, permit holder, or any other person subject to the registration or permit provisions of the Maryland Cemetery Act...
 - who sells or offers to sell to the public a burial lot or burial right...
 - in a cemetery for which perpetual care is stated or implied...
 - must establish a perpetual care trust fund with a minimum deposit of \$10,000, \$25,000, or \$50,000 depending on the type of cemetery and amount of developed land area
- Timing of Future Deposits
 - Must also contribute a certain amount within 30 days after the end of the month when the buyer of a right of interment in a burial lot, above-ground crypt, or niche makes a final payment

Perpetual Care Requirements (Cont.)

- Perpetual Care Trust Reports
 - Registrants must submit an annual perpetual care trust report to the office
 - The reports must contain various information, including beginning balance of the fund and the annual amount of money received subject to trust requirements, deposited into the fund, and spent on relevant maintenance and care
 - Each report must be certified as to its correctness by a certified public accountant (CPA)

Need for Accountant Review of Trust Reports

- The office would benefit greatly from a staff accountant reviewing the reports
- The office receives approximately 80 reports a year, with reports reaching up to 50 pages
- Part-time, one-day-a-week basis for the cost of \$10,000 to \$15,000

Recommendation 14 (pg. 28): The Office of Cemetery Oversight should procure a part-time, contractual accountant capable of analyzing regulated cemeteries' perpetual care trust reports for noncompliance with statutory perpetual care requirements

Repeal of Perpetual Care Exemptions

- Cemeteries owned by a local government, church, synagogue, other religious organization, nonprofit created before 1900 by the General Assembly, or a State veterans' agency are exempt from perpetual care requirements
- 2005 full evaluation recommended repealing these exemptions except for cemeteries operated by a State veterans' agency
- Preneed trust requirements have no similar exemptions
- Office's inventory lists approximately 1,800 currently exempted cemeteries, but many of these may not be currently selling or offering to sell burial lots or burial rights

Repeal of Perpetual Care Exemptions (Cont.)

Recommendation 15 (pp. 29-30): Statute should be amended to require any cemetery, other than a veterans' cemetery operated by the State, that sells or offers to sell to the public a burial lot or burial right in a cemetery at which perpetual care is stated or implied to comply with the perpetual care trust provisions, thereby repealing the exemption from perpetual care trust requirements for a cemetery that is owned and operated by a local government, church, synagogue, religious organization, or nonprofit organization created before 1900 by an Act of General Assembly and currently selling or offering to sell a burial lot or right. Current fees applicable to trust reports should apply to anyone required to submit a perpetual care trust report. Consideration should be given to phasing in these requirements. Requiring the currently exempted cemeteries to adhere to the perpetual care trust requirements on July 1, 2013, with annual trust reports due to the office 120 days after the end of calendar 2013 is a reasonable timeframe

Complaint Processing and Resolution

- The office receives approximately 100 formal complaints a year
- Average resolution time of 36 days
- The office may attempt to mediate an unregulated issue
- Director has authority to hold hearings

Advisory Council's Assistance May Be Valuable in Complaint Resolution

- The council has no statutory authority over consumer complaints
- May be possible to close meetings under Maryland's Open Meetings Act in order to avoid privacy concerns
- Complaints are time-sensitive, but occasional use of the council could be beneficial

Recommendation 16 (pg. 33): Statute should be amended to specifically authorize the director or the director's designee to confer with the advisory council as a whole or individual members of the council on complaint processing and resolution. Consideration should be given to closing portions of advisory council meetings to allow for more in-depth discussion of complaints

Annual Complaint Report Lacks Detail and Required Timeline Information

- 2005 full evaluation recommended a more detailed annual complaint report
- Second page of report combines both inquiries and complaints
- Combination of inquiries and complaints makes it difficult to determine data trends for complaints
- Definitions for certain types of resolutions may be helpful

Annual Complaint Report Lacks Detail and Required Timeline Information (Cont.)

- Annual complaint report includes the average resolution time
 - Fiscal 2010 average was 36 days
- Department of Legislative Services inspected nearly 60 complaint files
 - Majority resolved in less than 40 days
- Statute requires the office to establish a schedule and report the number of complaints resolved within this timeline

Office's Annual Complaint Report Must Be Altered

Recommendation 17 (pg. 36): Statute should be amended to require the director to modify the second page of the annual complaint report to distinguish the type of purchase, focus of dissatisfaction, and type of resolution for both complaints and inquiries. Additionally, the report should define the types of resolution it lists

Recommendation 18 (pg. 36): 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. Once developed, future annual complaint reports should include the number of complaints resolved within this timeframe

Special-fund Status Remains Appropriate

- 2005 full evaluation recommended a repeal of the Cemetery Oversight Fund because the fund did not have sufficient collections to cover office expenditures in five of the office's first eight years
- Funding picture improved but is changing again
 - Contract fees increased from \$5 to \$10 in 2007
 - Large biennial deficit over fiscal 2010 and 2011
 - Planned contract fees increase (from \$10 to \$13) in early calendar 2012

Fiscal 2012-2013 Projections with Sales Contract Fee Increase

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
Starting Special Fund Balance	\$151,837	\$255,351	\$47,891	\$257,891
Revenues Collected	631,130	207,880	660,000	260,000
Total Revenues Available	782,967	463,231	707,891	517,891
Total Expenditures	527,616	415,340	450,000	465,000
Annual Surplus/(Deficit)	103,514	(207,460)	210,000	(205,000)
Biennial Surplus/(Deficit)	-	(103,946)	-	5,000
Ending Special Fund Balance	\$255,351	\$47,891	\$257,891	\$52,891

Increased Attention to the Reporting of Sales Contract Figures

- A cemetery reports number of contracts every two years
- No supporting documentation is necessary
- Office believes numbers to be accurate

Recommendation 19 (pg. 41): Statute should be amended to require that the office's permit renewal forms be changed to require supporting documentation for the cemetery's reported number of applicable sales contracts

Increased Number of Cremations May Affect Revenues

- Rate of cremations has been steadily increasing
 - In 2009, approximately 44,000 deaths occurred in Maryland
 - Cremations accounted for 33% of body disposals

Recommendation 20 (pg. 41): Uncodified language should be adopted to instruct the director and the advisory council to study the issue of the increasing rate of cremations within the death care industry. Particular attention should be paid to whether the rate of cremations will continue to rise at the same rate and the possible effect this trend may have on the office's finances