

2022 Regular Session

HOUSE BILL NO. 785

BY REPRESENTATIVE RISER

CEMETERIES: Provides relative to perpetual cemetery care trust funds created and administered in accordance with the Louisiana Cemetery Act

1 AN ACT

2 To amend and reenact R.S. 8:454(C)(1) and (2)(a) and (d), 454.1(A), 456.1(3), 502(F), and  
3 502.2(3) and to enact R.S. 8:454(C)(2)(f) and 454.2, relative to trust funds for  
4 perpetual care of cemeteries; to provide requirements with respect to certain master  
5 trust funds and their trustees; to provide for administration of cemetery care trust  
6 funds; to provide requirements and restrictions relative to distribution of income  
7 from such trust funds; to provide for certain duties and requirements of the Louisiana  
8 Cemetery Board with respect to such trust funds; to provide for definitions; to  
9 provide an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 8:454(C)(1) and (2)(a) and (d), 454.1(A), 456.1(3), 502(F), and  
12 502.2(3) are hereby amended and reenacted and R.S. 8:454(C)(2)(f) and 454.2 are hereby  
13 enacted to read as follows:

14 §454. Trust funds required; master trust fund

15 \* \* \*

16 C.(1)(a) Notwithstanding any provision of law to the contrary, for the  
17 purposes of collective investment and administration and with written consent of  
18 each participant in a master trust fund, a designated trustee of two or more trust  
19 funds may apply to the board to establish a master trust fund in which deposits are  
20 made pursuant to the provisions of this Title.

1                   **(b) The trustee shall submit the information required in this Subsection on**  
2                   **an application form prescribed by the board, accompanied by an application fee set**  
3                   **by board not to exceed one thousand five hundred dollars to cover the board's**  
4                   **reasonable and ordinary expenses associated with determining compliance with**  
5                   **applicable provisions of this Title.**

6 (2) The master trust fund shall be subject to the following requirements:

(a) It shall include only trust funds with a ~~principal~~ total balance of less than ~~two hundred fifty thousand dollars~~ one million dollars. Upon a determination that a trust fund made a part of a master trust fund has a ~~principal sum~~ total balance exceeding ~~two hundred fifty thousand dollars~~ one million dollars at the end of a reporting period, such trust fund shall no longer be subject to the collective investment and administration of the master trust fund and shall be removed from the master trust fund within ninety days.

14 \* \* \*

(d) The annual report by the designated trustee of the master trust fund shall include an itemized separate accounting for each participant in the master trust fund. Such annual report shall comply with the provisions of R.S. 8:456 this Title.

18 \* \* \*

19                    (f) Income distributions to all participants within a perpetual care master  
20                    trust fund shall be based on either a net income or a total return distribution method  
21                    as provided by R.S. 8:454.2.

22 §454.1. Administration of trust funds; maintenance; exemption from seizure

A. The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. The income shall be used solely for the care of those portions of the cemetery in which interment spaces have been sold with a provision for perpetual or endowed care. It is the intent of this Section that the income of said fund shall be used solely for the care of interment spaces sold with a provision for perpetual or endowed care and for the care of other portions of the cemetery immediately surrounding said spaces as may be necessary to preserve the

1 beauty and dignity of the spaces sold. Income distributions within a perpetual care  
2 trust fund shall mean the net income or total return distribution method as provided  
3 by R.S. 8:454.2. The fund or its income shall never be used for the development,  
4 improvement, or embellishment of unsold portions of the cemetery so as to relieve  
5 the cemetery authority of the ordinary cost incurred in preparing such property for  
6 sale.

7 \* \* \*

8 §454.2. Income distribution methods; application; restrictions

9 A. As used in this Section, the following terms have the meaning ascribed  
10 to them in this Subsection:

11 (1) "Net income method" means a method wherein interest and dividends are  
12 reduced by permissible fees and taxes.

13 (2)(a) "Total return distribution method" means the distribution of funds  
14 from the perpetual care fund based on the average fair market value of the fund  
15 assets multiplied by the total return percentage.

16 (b) For purposes of the definition provided in this Paragraph, "average fair  
17 market value" means the average of the fair market values of assets held by the trust  
18 fund on the last day of the current business year and the last day of each of the two  
19 preceding years, or the average of the fair market value for the entire term of the trust  
20 fund if there are less than two preceding years.

21 (c) For purposes of the definition provided in this Paragraph, "total return  
22 percentage" means the annual percentage selected by the cemetery authority and  
23 approved by the board in accordance with the provisions of this Section. The total  
24 return percentage shall not exceed four percent of the average fair market value of  
25 the trust fund.

26 B. Income distributions from perpetual care trust funds shall be made  
27 exclusively through either the net income method or the total return distribution  
28 method.

1           C. A perpetual care trust fund may elect to use the total return distribution  
2           method only if the trust fund is administered by a qualified institutional trustee as  
3           provided for by R.S. 8:454(B).

4           D.(1) The cemetery authority shall apply to the board at least ninety days  
5           prior to the effective date of the election in order to use the total return distribution  
6           method. The cemetery authority or trustee shall provide the board with all of the  
7           following:

8                   (a) A written investment policy. The investment goals shall be to achieve  
9                   principal growth through permissible investments under this Title for perpetual care  
10                  trust funds with a secondary goal of achieving current income.

11                  (b) An amended perpetual care trust agreement on board-approved forms  
12                  that clearly show the selection of the total return distribution method.

13                  (c) A written distribution policy establishing the total return percentage and  
14                  initial estimated average fair market value, using the most recent month-end balances  
15                  as the estimate for the current business year, signed by the cemetery authority or  
16                  trustee.

17                  (2) The board may require such information, supporting documentation, and  
18                  proof as it deems advisable concerning the applicant's compliance with this Title and  
19                  the rules and regulations of the board.

20                  (3) The board shall determine that the cemetery authority and trustee have  
21                  met the requirements under the law prior to approving the application to implement  
22                  a total return distribution method. If the board refuses to approve the application,  
23                  such notification shall contain details of the information needed to remedy any  
24                  deficiencies with the application. The board shall notify the cemetery authority no  
25                  later than ninety days after receiving the application. Applications submitted ninety  
26                  days prior to the beginning of the business year, once approved by the board, shall  
27                  be retroactive to the beginning of the business year.

28                  (4) The cemetery authority shall submit the information required in this  
29                  Subsection on an application form prescribed by the board, accompanied by an

1        application fee set by the board not to exceed one thousand five hundred dollars to  
2        cover the board's reasonable and ordinary expenses associated with determining  
3        compliance with applicable provisions of this Title.

4                E. A cemetery authority may select a distribution method by delivering  
5        written instructions to the trustee of the fund no later than thirty days prior to the  
6        beginning of the business year. Once approved by the board, such distribution  
7        method and the total return distribution rate shall remain in effect unless the  
8        cemetery authority notifies the trustee of its desire to effect a change; application for  
9        such change has been submitted to the board; and copies of such documentation are  
10       submitted to the trustee. If the trustee does not receive written instructions from the  
11       cemetery authority informing the trustee of the distribution method chosen, then the  
12       trustee shall calculate and distribute based on the net income distribution method.

13               F. The approved total return distribution percentage may be reduced by the  
14       cemetery authority but may not be increased unless an additional application is made  
15       to the board with documentation demonstrating the rate of return of the perpetual  
16       care funds over the last three years to support an increase in the percentage.

17               G. A cemetery authority that has elected the total return distribution method  
18       may elect to reconvert to a net income distribution method by submitting written  
19       documentation to the board in support of the reconversion, including a copy of the  
20       trust agreement, notification on the proposed effective date of the reconversion, and  
21       any additional information required by the board.

22               H. The board may take corrective measures including reducing the approved  
23       total return percentage, or requiring a distribution of only net income for a business  
24       year, under one or more of the following circumstances:

25               (1) The average fair market value of the trust fund from one three-year  
26       period to the previous three-year period declines by ten percent or more.

27               (2)(a) The fair market value of the trust fund at the end of a business year is  
28       less than ninety percent of the sum of the fair market value of the fund at inception  
29       plus all deposits made since inception

(b) For purposes of this Paragraph, "inception" means the first day of the business year when the perpetual care trust fund started making distributions based on the total return distribution method.

(3) There is an uncorrected financial or investment-related perpetual care deficiency as determined by the board after review of the annual trust fund report or on-site examination.

(4) The board determines that the trustee is not able to demonstrate sufficient knowledge and expertise regarding the effective implementation of distributing income for the maintenance of the cemetery using this method.

I. The board may evaluate the perpetual care fund conditions and choose not to impose corrective measures if it finds any of the following:

(1) The reasons are due to unusual or temporary factors not within the control of the cemetery authority or the trustee and which could not have been reasonably anticipated.

(2) The current investment policy for the fund is reasonably designed to protect the fund from further declines in fair market value.

(3) The exception appears to be both necessary and appropriate for the continued protections of the perpetual care fund.

J. If permissible fees paid from the perpetual care fund exceed one and one-half percent of the fair market value in a given year, the amount in excess shall be deducted from the approved total return distribution.

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#### §456.1. Resignation of trustee; orderly transfer of trust fund

Whenever a trustee resigns, the following documentation shall be filed with the board to insure an orderly transfer of the trust fund from the resigning trustee to the successor trustee:

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(3) A written statement from the successor trustee, qualified under ~~R.S. 8:454(B)(1)~~ R.S. 8:454(B), accepting the trust fund.

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§502. Payments to trust; amounts required

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F. The trust shall be operated in conformity with ~~R.S. 8:454(B)~~ R.S.

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8:454(C) and 465(A) with respect to the nature and character of the trust and duties

6

of the trustee.

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\* \* \*

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§505.2. Resignation of trustee; orderly transfer of trust fund

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Whenever a trustee resigns, the following documentation must be filed with

10

the board to insure an orderly transfer of the trust fund from the resigning trustee to

11

the successor trustee:

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\* \* \*

13

(3) A written statement from the successor trustee, qualified under ~~R.S.~~

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~~8:454(B)(1)~~ R.S. 8:454(B), accepting the trust fund.

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\* \* \*

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Section 2. This Act shall become effective on January 1, 2023.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 785 Original

2022 Regular Session

Riser

**Abstract:** Revises and enacts various provisions of law pertaining to perpetual cemetery care trust funds.

Proposed law provides authorizations, conditions, restrictions, and requirements with respect to perpetual cemetery care trust funds created pursuant to present law, R.S. 8:451 et seq.

Proposed law requires that income distributions from perpetual cemetery care trust funds be made exclusively through certain authorized methods.

Proposed law provides for duties and requirements of the La. Cemetery Board with respect to perpetual cemetery care trust funds.

Proposed law makes revisions in present law as necessary for conformity with proposed law.

Effective January 1, 2023.

(Amends R.S. 8:454(C)(1) and (2)(a) and (d), 454.1(A), 456.1(3), 502(F), and 502.2(3);  
Adds R.S. 8:454(C)(2)(f) and 454.2)