

2023 Regular Session

HOUSE BILL NO. 554

BY REPRESENTATIVE RISER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CEMETERIES: Provides relative to the cemetery care fund

1 AN ACT

2 To amend and reenact R.S. 8:454.1(A) and to enact R.S. 8:454.2, relative to the cemetery  
3 care fund; to provide for income distributions within a perpetual care trust fund; to  
4 provide for income distribution methods; to provide for definitions; to provide for  
5 an application for a total return distribution method; to require the payment of  
6 application fees; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 8:454.1(A) is hereby amended and reenacted and R.S. 8:454.2 is  
9 hereby enacted to read as follows:

10 §454.1. Administration of trust funds; maintenance; exemption from seizure

11 A. The principal of the trust fund shall remain permanently intact and only  
12 the income therefrom shall be expended. The income shall be used solely for the  
13 care of those portions of the cemetery in which interment spaces have been sold with  
14 a provision for perpetual or endowed care. It is the intent of this Section that the  
15 income of the fund shall be used solely for the care of interment spaces sold with a  
16 provision for perpetual or endowed care and for the care of other portions of the  
17 cemetery immediately surrounding the spaces as may be necessary to preserve the  
18 beauty and dignity of the spaces sold. Income distributions within a perpetual care  
19 trust fund means the net income or total return distribution method as provided for  
20 in R.S. 8:454.2. The fund or its income shall never be used for the development,

1 improvement, or embellishment of unsold portions of the cemetery so as to relieve  
2 the cemetery authority of the ordinary cost incurred in preparing such property for  
3 sale.

4 \* \* \*

5 §454.2. Income distribution methods; application; restrictions

6 A. For the purposes of this Section, the following terms have the following  
7 meanings ascribed to them:

8 (1) "Average fair market value" means the average of the fair market value  
9 of assets held by the trust fund on the last day of the current calendar year and the  
10 last day of each of the two preceding calendar years or the average of the fair market  
11 value for the entire term of the trust fund if there are less than two preceding years.

12 (2) "Inception" means the first day of the calendar year on which  
13 distributions from the perpetual care trust fund are first made based on the total  
14 return distribution method.

15 (3) "Net income" means interest and dividends reduced by permissible fees  
16 and taxes.

17 (4) "Total return distribution" means the distribution of funds from the  
18 perpetual care fund based on the average fair market value of the fund assets  
19 multiplied by the total return percentage.

20 (5) "Total return percentage" means the annual percentage selected by the  
21 cemetery authority and approved by the board in accordance with this Section. The  
22 total return percentage shall not exceed four percent of the average fair market value  
23 of the trust fund.

24 B. Income distributions from perpetual care trust funds shall be made with  
25 consideration of either net income or total return distribution.

26 C. A trustee of a perpetual care trust fund may only elect to use the total  
27 return distribution method if the trust fund is administered by either a qualified  
28 institutional trustee as provided for by R.S. 8:454(B), for trusts established in  
29 accordance with R.S. 8:457, or where the trustee or investment advisor managing the

1 funds demonstrates sufficient knowledge and expertise related to total return  
2 investing and distributions.

3 D.(1) The cemetery authority shall apply to the board at least ninety days  
4 prior to the effective date of the election to use the total return distribution method.

5 The cemetery authority or trustee shall provide the board with all of the following:

6 (a) A written investment policy with investment goals to achieve principal  
7 growth through permissible investments pursuant to this Title for perpetual care trust  
8 funds and with a secondary goal of achieving current income.

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

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

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

18 (3) The board shall determine that the cemetery authority or trustee has met  
19 the requirements provided for in this Section prior to approving the application to  
20 implement a total return distribution method. If the board refuses to approve the  
21 application, such notification shall contain details of the information needed to  
22 remedy any deficiencies with the application. The board shall notify the cemetery  
23 authority no later than ninety days after receiving the application. An application  
24 that is submitted ninety days prior to the beginning of the calendar year, once  
25 approved by the board, shall be retroactive to the beginning of that calendar year.

26 (4) The cemetery authority shall submit the information required in this  
27 Subsection on an application form prescribed by the board, accompanied by an  
28 application fee set by the board not to exceed one thousand five hundred dollars to

1 cover the board's reasonable and ordinary expenses associated with determining  
2 compliance with applicable provisions of this Title.

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

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

16 G. A cemetery authority that has implemented the total return distribution  
17 method may elect to revert to a net income distribution method by submitting  
18 written documentation to the board in support of the reversion, including a copy  
19 of the trust agreement, a written notification on the proposed effective date of the  
20 reversion, and any additional information required by the board. No cemetery  
21 authority may change its distribution method more than once within a three-year  
22 period unless required by the board.

23 H.(1) The board shall require corrective measures be taken, including  
24 reducing the approved total return percentage, requiring a distribution of only net  
25 income for a calendar year, or requiring a monthly retest outlined in Subparagraph  
26 (c) of this Paragraph applies and whereby no distribution of any income is made until  
27 the failed test is passed, if any of the following circumstances occur:

1           (a) The average fair market value of the trust fund at the end of the most  
2           recent rolling three-year period, as compared to the average fair market value of the  
3           previous rolling three-year period, declines by ten percent or more.

4           (b) The fair market value of the trust fund at the end of a calendar year is less  
5           than ninety percent of the sum of the fair market value of the fund at inception plus  
6           all deposits made since inception.

7           (c) A cemetery authority has failed to meet the tests in Subparagraph (a) or  
8           (b) of this Paragraph, and after a full calendar year of distributing only net income,  
9           still fails to meet the tests in this Subsection.

10           (d) There is an uncorrected financial- or investment-related perpetual care  
11           deficiency as determined by the board after review of the annual trust fund report or  
12           onsite examination.

13           (2) If a cemetery authority fails to take any required action, it shall be subject  
14           to any and all enforcement actions or penalties pursuant to this Chapter.

15           I. In the event that permissible fees paid from the perpetual care fund exceed  
16           one and one-half percent of the fair market value in a given year, the amount in  
17           excess shall be deducted from the approved total return distribution.

#### 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 554 Engrossed

2023 Regular Session

Riser

**Abstract:** Relative to cemeteries, creates income distribution methods that can be implemented for perpetual care trust funds.

Present law requires the principal of a cemetery trust fund to remain permanently intact and for any income generated to be expended. Present law further requires for the income to only be used for the care for the portion of the cemetery where interment spaces have been sold for perpetual or endowed care.

Present law provides that income funds are intended and shall only be used for the care of interment spaces sold for perpetual or endowed care and for the care of other portions of the cemetery immediately surrounding spaces that need to be preserve.

Proposed law retains present law and includes that income distributions within a perpetual care trust fund shall mean the net income or total return distribution method as provided for in proposed law (R.S. 8:454.2).

Proposed law defines "average fair market value", "inception", "net income", "total return distribution", and "total return percentage".

Proposed law requires income distributions from perpetual care trust funds to be made with consideration of either net income or total return distribution.

Proposed law provides that a trustee of a perpetual care trust fund may elect to use the total return distribution method, if the trust fund is administered by either a qualified institutional trustee as provided for in present law for trusts established in accordance with present law (R.S. 8:457), or when the trustee or investment advisor managing the funds demonstrates sufficient knowledge and expertise related to total return investing and distributions.

Proposed law provides that the cemetery authority shall apply to the board at least 90 days prior to the effective date of the election to use the total return distribution method.

Proposed law requires the cemetery authority or trustee to provide all of the following to the board:

- (1) A written investment policy that details investment goals for achieving principal growth through permissible investments for perpetual care trust fund in addition to a secondary goal for achieving current income.
- (2) An amended perpetual care trust agreement on board approved forms that clearly states the selection of the total return distribution method.
- (3) A written distribution policy that establishes the total return percentage and initial estimated average fair market value, using the most recent month end balances as the estimate for the current calendar year.

Proposed law states that the board may require any information, supporting documentation, and proof concerning an applicant's compliance.

Proposed law states that board shall determine if the cemetery authority or trustee has met all requirements prior to approving the application to implement a total return distribution method. Proposed law further provides the procedure for when the board refuses to approve an application.

Proposed law provides that a cemetery authority shall submit the information required by proposed law on an application form prescribed by the board, accompanied by an application fee not to exceed \$1,500.

Proposed law allows a cemetery authority to select a distribution method by delivering written instructions to the trustee of the fund no later than 30 days prior to the beginning of a calendar year.

Proposed law provides that the distribution method and the total return distribution rate shall remain in effect unless the cemetery authority notifies the trustee of its desire to effectuate change.

Proposed law allows a cemetery authority that has implemented the total return distribution method, the option to elect to reconvert to a net income distribution method. Proposed law provides that if the cemetery authority elects to do so, the cemetery authority must submit written documentation to the board in support of the reconversion.

Proposed law provides that, unless required by the board, no cemetery authority may change its distribution method more than once within a three-year period.

Proposed law requires the board to take corrective measures if any of the following circumstances occur:

- (1) When the average fair market value of the trust fund at the end of the most recent rolling three-year period, in comparison to the average fair market value of the previous rolling three-year period, declines by 10% or more.
- (2) When the fair market value of the trust fund at the end of a calendar year is less than 90% of the sum of the fair market value of the fund at inception in addition to all deposits made since inception.
- (3) When a cemetery authority has failed to meet the tests required by proposed law and after a full calendar year of distributing only net income, the cemetery board still fails to meet the tests required by proposed law.
- (4) When, upon review of the annual trust fund report or on-site examination, the board determines there is an uncorrected financial or investment related perpetual care deficiency.

Proposed law provides that in addition to the aforementioned corrective measures, the board can also reduce the approval total return percentage, require a distribution of only net income for a calendar year, or require a monthly retest.

Proposed law requires that if a cemetery authority fails to take any required action, the authority will be subject to any and all enforcement actions or penalties provided for in present law.

Proposed law states that if permissible fees paid from the perpetual care fund exceed 1.5% of the fair market value in a given year, the amount in excess shall be deducted from the approved total return distribution.

(Amends R.S. 8:454.1(A); Adds R.S. 8:454.2)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Add that a trustee of a perpetual care trust fund may elect to use the total return distribution method for trusts established in accordance with present law (R.S. 8:457).
2. Revise definitions in proposed law.
3. Make technical changes.