

ACT No. 29

2023 Regular Session

HOUSE BILL NO. 554

BY REPRESENTATIVE RISER

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

24 * * *

1 §454.2. Income distribution methods; application; restrictions

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

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

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

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

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

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

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

22 C. A trustee of a perpetual care trust fund may elect to use the total return
 23 distribution method only if the trust fund is administered by either a qualified
 24 institutional trustee as provided for by R.S. 8:454(B), for trusts established in
 25 accordance with R.S. 8:457, or where the trustee or investment advisor managing the
 26 funds demonstrates sufficient knowledge and expertise related to total return
 27 investing and distributions.

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

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

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

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

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

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

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

21 (4) The cemetery authority shall submit the information required in this
22 Subsection on an application form prescribed by the board, accompanied by an
23 application fee set by the board not to exceed one thousand five hundred dollars to
24 cover the board's reasonable and ordinary expenses associated with determining
25 compliance with applicable provisions of this Title.

26 E. A cemetery authority may select a distribution method by delivering
27 written instructions to the trustee of the fund no later than thirty days prior to the
28 beginning of a calendar year. Once approved by the board, the distribution method
29 and the total return distribution rate shall remain in effect unless the cemetery
30 authority notifies the trustee of its desire to effect a change, provides an application

1 for such change to the board, and provides copies of such documentation to the
2 trustee. In the event that the trustee does not receive written instructions from the
3 cemetery authority informing the trustee of the distribution method chosen, the
4 trustee shall calculate and distribute based on the net income distribution method.

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

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

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

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

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

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

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____