

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 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





(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)