RÉSUMÉ DIGEST

ACT 29 (HB 554) **2023 Regular Session** **Riser**

Existing law requires the principal of a cemetery trust fund to remain permanently intact and for any income generated to be expended. Existing law further requires 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.

Existing 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 preserved.

New law retains existing 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 new law (R.S. 8:454.2).

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

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

New 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 existing law for trusts established in accordance with existing 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.

New law requires 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.

New 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.

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

New law states that the 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. New law further provides the procedure for when the board refuses to approve an application.

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

New 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.

New 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.

New law provides that the approved total return distribution percentage may be reduced by the cemetery authority, but not increased without an additional application.

New 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. New 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.

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

New 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 new law and after a full calendar year of distributing only net income, the cemetery board still fails to meet the tests required by new 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.

New 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.

New 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 existing law.

New 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.

Effective August 1, 2023.

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