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HOUSE BILL DRH40435-MU-15A (02/14)

Short Title: Cemeteries/Perpetual Care Trust Funds. (Public)

Sponsors: Representative Michaux.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE UNIFORMITY IN THE MANAGEMENT OF PERPETUAL CARE
3 TRUST FUNDS FOR THE BENEFIT OF CEMETERIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 65-48 reads as rewritten:

6 "§ 65-48. Definitions.

7 As used in this Article, unless otherwise stated or unless the context or subject matter
8 clearly indicates otherwise:

9 ...

10 (13a) "Net income" means cash income after the payment of all trust
11 administration expenses, including the trustee's expenses, fees, and taxes.

12 (13b) "Perpetual care trust fund" means a trust fund that provides for the perpetual
13 care and maintenance of a cemetery. The term includes a care and
14 maintenance trust fund, a perpetual care fund, and a perpetual trust fund.

15"

16 SECTION 2. Article 9 of Chapter 65 of the General Statutes is amended by adding
17 a new section to read:

18 "§ 65-64.1. Management of perpetual care trust fund.

19 (a) Applicability. – This section applies to perpetual care trust fund agreements entered
20 into, renewed, or modified on or after the effective date of this act. To the extent this section
21 conflicts with other provisions in this Article, this section controls.

22 (b) State Treasurer. – A cemetery company may enter into a perpetual care trust fund
23 agreement with a trustee that meets the requirements of G.S. 65-60.1 or the State Treasurer.
24 The State Treasurer shall replace a trustee in any of the following events:

25 (1) If the trustee is licensed by the Commissioner of Banks or the Administrator
26 of Credit Unions, the trustee's license is suspended, revoked, or expired.

27 (2) The Cemetery Commission disapproves the trustee.

28 (c) Management of Fund. – The trustee shall invest and reinvest the perpetual care trust
29 fund in accordance with G.S. 32-71. At least quarterly, the trustee shall pay to the cemetery
30 company the net income of the perpetual care trust fund and shall furnish to the cemetery
31 company an accounting statement that shows all investments, the investments' costs, the
32 investments' current market value, all income earned on the investments, and the net income
33 paid to the cemetery company during the period covered by the statement. The trustee shall add
34 all appreciation, gains, stock dividends, and other benefits, other than cash income, to the
35 corpus of the perpetual care trust fund. The trustee shall charge any loss on investment against
36 the corpus. If the net income is insufficient to pay all trust administration expenses, the



1 cemetery company is not obligated to pay the unpaid amount. No person shall withdraw,
2 transfer, or place a security interest in any portion of the corpus.

3 (d) Trustee's Bond. – A trustee of a perpetual care trust fund shall file a bond with the
4 Cemetery Commission to secure the performance of the trustee's duties under this Article. The
5 trustee's bond shall be secured by a suretyship bond executed by a corporate surety company
6 authorized by the Commissioner of Insurance to do business in this State. The amount of the
7 trustee's bond shall be in the following amount:

8 (1) If the value of the perpetual care trust fund is one hundred thousand dollars
9 (\$100,000) or less, the amount of the trustee's bond shall be at least one
10 hundred twenty-five percent (125%) of the value of the perpetual care trust
11 fund.

12 (2) If the value of the perpetual care trust fund exceeds one hundred thousand
13 dollars (\$100,000), the amount of the trustee's bond shall be at least one
14 hundred ten percent (110%) of the value of the perpetual care trust fund.

15 As provided in G.S. 53-159 and G.S. 53-366(a)(10), a bank or trust company licensed to do
16 trust business in this State is exempt from the requirements of this subsection. The State
17 Treasurer is also exempt from the requirements of this subsection.

18 (e) No Variation. – The parties to a perpetual care trust fund agreement shall not vary
19 the requirements of this section without first obtaining written consent from either the
20 Cemetery Commission or, if the State Treasurer is the trustee, the State Treasurer."

21 **SECTION 3.** This act is effective when it becomes law and applies to perpetual
22 care trust fund agreements entered into, renewed, or modified on or after that date.