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AB-926 Cemeteries: endowment funds. (2017-2018)

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Assembly Bill No. 926

CHAPTER 750

An act to amend Section 7612.6 of the Business and Professions Code, and to amend Sections 8725, 8726, and 8726.1 of, and to add Section 8726.2 to, the Health and Safety Code, relating to cemeteries.

[Approved by Governor October 13, 2017. Filed with Secretary of State October 13, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 926, Irwin. Cemeteries: endowment funds.

Existing law authorizes a cemetery authority which maintains a cemetery to place its cemetery under endowment care and establish, maintain, and operate an endowment care fund. Existing law requires the principal of all funds for endowment care to be invested, and only the net income to be used for the maintenance, repair, or restoration of the cemetery property. Existing law requires each cemetery authority to file a report with the Cemetery and Funeral Bureau setting forth specified information, including, among other things, the amount collected and deposited in both endowment care funds. Existing law authorizes the bureau to extend the date on which this report is due by 30 days.

This bill would authorize the Cemetery and Funeral Bureau to extend the date on which the above-mentioned report is due by no more than 9 months. The bill, if a cemetery authority establishes an endowment care fund, would make the fund automatically subject to a net income distribution method and would specify the requirements for distribution under that method. The bill would also authorize a cemetery authority, its directors, or its board of trustees to, on or after January 1, 2020, apply to the bureau to convert its endowment care fund from a net income distribution method to a unitrust distribution method, as defined, and would describe the conditions under which the bureau would approve that application. The bill would require the bureau to review, on an annual basis, whether a cemetery authority continues to meet the conditions of approval for the unitrust distribution method, and would authorize the bureau to require the use of the net income distribution method if the cemetery authority does not meet those conditions. The bill would require the bureau to evaluate the effectiveness of the unitrust distribution authority and to report at its next 2 hearings before the Joint Sunset Review Oversight Hearings of the Assembly Committee on Business and Professions and Senate Committee on Business, Professions and Economic Development that occurs after January 1, 2018.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7612.6 of the Business and Professions Code is amended to read:

7612.6. (a) Each cemetery authority shall file with the bureau annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the bureau as provided for in Section 7612.7, a written report in a form prescribed by the bureau setting forth the following:

(1) The number of square feet of grave space and the number of crypts and niches sold or disposed of under endowment care by specific periods as set forth in the form prescribed.

(2) The amount collected and deposited in both the general and special endowment care funds segregated as to the amounts for crypts, niches, and grave space by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority.

(3) A statement showing separately the total amount of the general and special endowment care funds invested in each of the investments authorized by law and the amount of cash on hand not invested, which statement shall actually show the financial condition of the funds.

(4) A statement showing separately the location, description, and character of the investments in which the special endowment care funds are invested. The statement shall show the valuations of any securities held in the endowment care fund as valued pursuant to Section 7614.7.

(5) A statement showing the transactions entered into between the corporation or any officer, employee, or stockholder thereof and the trustees of the endowment care funds with respect to those endowment care funds. The statement shall show the dates, amounts of the transactions, and shall contain a statement of the reasons for those transactions.

(b) The report shall be verified by the president or vice president and one other officer of the cemetery corporation. The information submitted pursuant to paragraphs (2), (3), (4), and (5) of subdivision (a) shall be accompanied by an annual audit report, prepared in accordance with generally accepted accounting principles, of the endowment care fund and special care fund signed by a certified public accountant or public accountant. The scope of the audit shall include the inspection, review, and audit of the general purpose financial statements of the endowment care fund and special care fund, which shall include the balance sheet, the statement of revenues, expenditures, and changes in fund balance.

(c) If a cemetery authority files a written request prior to the date the report is due, the bureau may, in its discretion, grant an extension for no more than an additional nine months within which to file the report.

SEC. 2. Section 8725 of the Health and Safety Code is amended to read:

8725. A cemetery authority that maintains a cemetery may place its cemetery under endowment care and establish, maintain, and operate an endowment care fund. Endowment care and special care funds consisting of trust funds created by irrevocable trust agreements may be commingled for investment and the net income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. Special care funds derived from trusts created by a revocable agreement shall not be commingled for investment and shall be accounted for separately from all other funds. The funds may be held in the name of the cemetery authority, its directors, or in the name of the trustees appointed by the cemetery authority.

SEC. 3. Section 8726 of the Health and Safety Code is amended to read:

8726. (a) The principal of all funds for endowment care shall be invested and the income only may be used for the care, maintenance, and embellishment of the cemetery in accordance with the provisions of law and the resolutions, bylaws, rules, and regulations or other actions or instruments of the cemetery authority and for no other purpose. Endowment and special care funds shall be maintained separate and distinct from all other funds and the trustees shall keep separate records thereof.

(b) For purposes of this article, the following definitions shall apply:

(1) "Income" means distribution under either the net income distribution method or the unitrust distribution method.

(2) "Unitrust distribution method" means an income distribution method where the net income amount, known as the unitrust amount, is no more than 5 percent of the fair market value of the trust assets.

SEC. 4. Section 8726.1 of the Health and Safety Code is amended to read:

8726.1. (a) If a cemetery authority establishes an endowment care fund, the fund shall be subject to a net income distribution method that requires all of the following:

(1) The trustee of the endowment care fund shall create a reserve from which principal losses may be replaced by setting aside a reasonable percentage of the income from the fund.

(2) The trustee may also set aside, out of income or net capital gains from investments, reserves for future maintenance, repair, replacement, or restoration of property or embellishments in the cemetery that may be necessary or desirable as a result of wear, deterioration, accident, damage, or destruction.

(3) The total amount of these reserves for maintenance, repair, and restoration shall not at any time exceed 10 percent of the endowment care fund.

(4) As used in this section, "net capital gains" means the amount by which cumulative realized capital gains since the establishment of the endowment care fund exceed the sum of cumulative realized capital losses since the establishment of the endowment care fund and capital gains previously set aside in reserve.

(5) Additions to the reserve in any year from net capital gains shall not exceed one-half the difference between the capital gains and the capital losses during the year.

(6) Net capital gains not set aside in reserve in any given year shall become a part of the principal of the endowment care fund.

(b) Notwithstanding subdivision (a), a cemetery authority may convert its endowment care fund from a net income distribution method to a unitrust distribution method if it obtains prior approval from the Cemetery and Funeral Bureau pursuant to Section 8726.2.

SEC. 5. Section 8726.2 is added to the Health and Safety Code, to read:

8726.2. (a) On or after January 1, 2020, a cemetery authority, its board of trustees, or its corporate trustee may apply to the Cemetery and Funeral Bureau to convert its endowment care fund from a net income distribution method to a unitrust distribution method.

(b) The bureau shall approve the application described in subdivision (a) only if all of the following conditions are met:

(1) The cemetery authority, its board of trustees, or its corporate trustee provides the investment objectives of the trust and those objectives promote the mutual goals of (A) growing the principal assets to sufficiently cover the cost of future and ongoing care and maintenance of the cemetery and (B) generating income to support the cemetery, as described in Section 8726.

(2) Evidence is provided that the cemetery authority, its board of trustees, or its corporate trustee will invest and manage the trust under the prudent investor rule, as described in Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the Probate Code.

(3) The cemetery authority, its board of trustees, or its corporate trustee demonstrates sufficient knowledge and expertise in investing and managing the endowment care fund under the unitrust distribution method.

(4) The unitrust amount is no more than 5 percent of the fair market value of the endowment care fund, determined by averaging the net fair market value of the assets as of the last trading day for each of the three preceding fiscal years.

(5) A reserve is created for future maintenance, repair, restoration of property, or embellishments in the cemetery for use when the endowment fund has inadequate funds for full distribution, as described in subparagraph (C) of paragraph (6). The cemetery authority, its board of trustees, or its corporate trustee may set aside a portion of the unitrust amount for the reserve.

(6) (A) The distribution of the unitrust amount may be made to the cemetery authority on a monthly, quarterly, semiannual, or annual basis, unless the endowment care fund has inadequate funds for full distribution.

(B) An endowment care fund has inadequate funds for full distribution if either of the following events occur:

(i) The fair market value of the endowment care fund, after the distribution, is less than 80 percent of the aggregate fair market value of the endowment care fund as of the end of the immediate preceding fiscal year.

(ii) The endowment care fund is less than the cumulative total of all principal contributions to the fund since inception.

(C) (i) If the endowment care fund has inadequate funds for full distribution, the distribution shall be limited to the lesser of net income distribution or an amount no more than a unitrust distribution of 1.5 percent of the fair market value of the assets as of the last trading day for each of the three preceding fiscal years.

(ii) The cemetery authority, its board of trustees, or its corporate trustee may draw from the reserve described in paragraph (5) only during a fiscal year where there are inadequate funds for full distribution. An amount drawn from the reserve during that fiscal year shall be the lesser of the difference between the unitrust amount described in paragraph (4) and the limited distribution amount described in clause (i), or one-third of the total amount of the reserve.

(7) Notwithstanding Section 8733 or 8733.5, the compensation of the trustee shall be reasonable and shall not exceed 0.1 percent of the net fair market value of the assets as of the last trading day for each of the three preceding fiscal years.

(8) The cemetery authority has submitted all annual reports, pursuant to Section 7612.6 of the Business and Professions Code, for the previous five consecutive years.

(c) The bureau shall deny a cemetery authority's application if the bureau has found any of the conditions described in subdivisions (a) to (f), inclusive, of Section 7613.9 of the Business and Professions Code.

(d) To assist the bureau in making its determination, the cemetery authority, its board of trustees, or its corporate trustee shall provide all relevant trust documents, including a proposed trust instrument, if available. If relevant trust documents become available after the bureau makes a determination, the cemetery authority, its board of trustees, or its corporate trustee shall provide it to the bureau.

(e) (1) The bureau shall review on an annual basis whether a cemetery authority continues to meet the conditions of approval, described in subdivision (b), for the use of the unitrust distribution method.

(2) If a cemetery authority is determined not to meet the original conditions of approval described in subdivision (b), or has failed to file an annual report pursuant to Section 7612.6 of the Business and Professions Code, the cemetery authority may be required to revert to the use of the net income distribution method.

(f) The bureau may adopt rules to administer this section and ensure compliance, including, but not limited to, reporting requirements.

(g) The bureau shall evaluate the effectiveness of this section and report at its next two hearings before the Joint Sunset Review Oversight Hearings of the Assembly Committee on Business and Professions and Senate Committee on Business, Professions and Economic Development that occurs after January 1, 2018.