

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

SENATE BILL 462

5 By: Senator J. Dismang  
6 By: Representative Perry  
7

## For An Act To Be Entitled

9 AN ACT TO REVISE THE CEMETERY ACT FOR PERPETUALLY  
10 MAINTAINED CEMETERIES; AND FOR OTHER PURPOSES.  
11

## Subtitle

14 TO REVISE THE CEMETERY ACT FOR  
15 PERPETUALLY MAINTAINED CEMETERIES.  
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17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code § 20-17-1006(1), concerning the authority of  
21 the Arkansas Cemetery Board, is amended to read as follows:

22 (1) ~~(A) Conduct at any time and from time to time such reasonable~~  
23 periodic, special, or other examination of ~~any a~~ a cemetery or cemetery  
24 company, including, ~~but not limited to,~~ without limitation an examination of  
25 the physical condition or appearance of the cemetery, the financial condition  
26 of the company and any trust funds maintained by the company, and ~~such~~ other  
27 examinations as the board or Securities Commissioner deems necessary or  
28 appropriate in the public interest.

29 ~~(B) The examinations shall be made by~~ examination shall be  
30 carried out by:

31 ~~(i) members~~ Members or representatives of the board;  
32 ~~or by~~

33 ~~(ii) a~~ A certified public accountant or registered  
34 public accountant as authorized in § 20-17-1007; or

35 (iii) The State Securities Department;  
36



1 SECTION 2. Arkansas Code § 20-17-1007(a), concerning examinations of  
2 cemeteries, is amended to read as follows:

3 (a)(1)(A) ~~Each~~ A cemetery company examined in accordance with § 20-17-  
4 1006 shall pay ~~to~~ the Arkansas Cemetery Board ~~a fee for each~~ for the  
5 examination ~~as the board shall prescribe by rule;~~

6 (i) Sixty dollars (\$60) per day for each examiner  
7 who conducts the examination; and

8 (ii) The amount necessary to reimburse the travel,  
9 meal, and lodging expenses of each examiner.

10 (B) In addition, the cemetery company shall pay to the  
11 board the amount of expenses and stipends paid by the board to any board  
12 member examining the physical condition or appearance of a cemetery when the  
13 examination is ordered by the board on its own motion or on request of an  
14 interested individual.

15 (2) ~~However, all examinations shall be~~ An examination shall be  
16 conducted by at least one (1) examiner employee of the State Securities  
17 Department or board member, ~~and the examinations shall be conducted only~~  
18 ~~pursuant to an order of the board.~~

19  
20 SECTION 3. Arkansas Code § 20-17-1008, concerning application for a  
21 permit, is amended to add an additional subsection to read as follows:

22 (e) The board may for good cause waive all or part of an application  
23 requirement of this section if an applicant is a state, city, or municipal  
24 government, or nonprofit organization as defined by the Internal Revenue  
25 Code, 26 U.S.C. § 501(c)(3).

26  
27 SECTION 4. Arkansas Code § 20-17-1013(a), concerning permanent  
28 maintenance funds, is amended to read as follows:

29 (a)(1)(A) The permanent maintenance fund is ~~declared to be~~ a trust  
30 fund for the purpose of administration, care, and maintenance of the  
31 cemetery, including lots, graves, spaces, crypts, niches, and burial rights,  
32 ~~or otherwise.~~

33 (B) The principal of the permanent maintenance fund shall  
34 be preserved.

35 (2)(A) The net income generated from the investment of the  
36 principal of the permanent maintenance fund shall be paid to and ~~be~~

1 ~~exclusively used and~~ expended by the owners, managers, ~~or~~ officers, ~~and or~~  
 2 directors of the cemetery company exclusively for the care and maintenance of  
 3 the cemetery, including the payment of taxes and administrative expenses of  
 4 maintaining the fund and for no other purpose.

5 (B) A cemetery company may add unused net income to the  
 6 principal of the permanent maintenance fund.

7 (3) ~~The~~ Except and provided in subdivision (a)(4) of this  
 8 section, the principal of the permanent maintenance fund shall be invested  
 9 and remain invested in ~~such~~ securities and funds ~~as are~~ permitted by the laws  
 10 of Arkansas for the investment of policy reserves of life insurance companies  
 11 ~~as set forth in~~ under § 23-60-101 et seq., and in the common trust funds of  
 12 state or national banks.

13 (4) ~~(A) However, any~~ A permanent maintenance fund having assets  
 14 of more than two hundred fifty thousand dollars (\$250,000) may invest not  
 15 more than fifty percent (50%) of its assets in nonassessable common stocks  
 16 ~~which are~~ listed on a national securities exchange, preferred stocks meeting  
 17 the requirements of § 23-63-815, and investment trust securities meeting the  
 18 requirements of § 23-63-820, ~~and.~~

19 ~~(B) the~~ The diversification restrictions of § 23-63-805  
 20 ~~shall do~~ not apply to investments in investment trust securities.

21 (5) In investing these funds, the trustee shall exercise the  
 22 judgment and care under the circumstances then prevailing which persons of  
 23 prudence, discretion, and intelligence exercise in management of their own  
 24 affairs, not in regard to speculation, but in regard to the permanent  
 25 disposition of their funds, considering the probable income and capital  
 26 appreciation as well as the probable safety of ~~their~~ the capital.

27 (6)(A) For purposes of this section, no more than fifty percent  
 28 (50%) of annual realized net capital gains on investments bought or acquired  
 29 after January 1, 2013, may be considered income and used according to  
 30 subdivision (a)(2) of this section.

31 (B) All other net capital gains on investments shall be  
 32 added to principal.

33  
 34 SECTION 5. Arkansas Code § 20-17-1014(c), concerning trustees of  
 35 permanent maintenance funds, is amended to add an additional subsection to  
 36 read as follows:

