

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

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Name of Rule _____

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**PROPOSED RULE 2
WITHDRAWAL FROM PERMANENT MAINTENANCE FUND**

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Section 1. Authority

This Rule is promulgated pursuant to Section One (1) of Act 343 of 2021 of the Arkansas General Assembly, codified at Ark. Code Ann. § 20-17-1013(g); authority is also found in Ark. Code Ann. § 23-61-1103(a)(5), Ark. Code Ann. § 25-15-204, and other applicable laws or rules.

Section 2. Purpose

The purpose of this Rule is to establish the process by which a cemetery company may make withdrawals from the principal balance of the cemetery's Permanent Maintenance Fund. The withdrawals shall be used only for funding infrastructure repairs and for making capital improvements.

Section 3. Definitions

A. "Infrastructure repair" means the repair, construction, or preservation of infrastructure items, including but not limited to roads, pathways, structures, fencing, walls, landscaping, and utilities such as irrigation systems.

B. "Capital improvement" includes, but is not limited to, the construction or preservation of any permanent building, structure, fence, wall, road, pathway, or utility such as an irrigation system. A capital improvement is an improvement that may enhance the cemetery's overall value or prolong its useful life.

Section 4. Requirements

A. The cemetery company shall submit its request in writing, on form(s) created and approved by the Board or in such form as the Board may require, at least twenty (20) business days prior to the Board Meeting in which the request is to be considered by the Board.

- B. The cemetery company shall include, as part of its written request, a detailed description of the infrastructure repair(s) and/or capital improvement(s) that are needed to the cemetery property. If the work is to be done by third party vendor(s), then at least three written (3) bids/estimates must also be included.
- C. Board staff will conduct an on-site inspection of the cemetery property to confirm that the request for withdrawal to repair, replace, or improve items or conditions is appropriate. The on-site inspection shall be reported back to the Board for consideration.
- D. Board staff will obtain an updated statement of account from the permanent maintenance fund trustee(s) and/or the bank or other financial institution in which the trusted funds are deposited. The updated statement of account must be based upon the most recent month end period preceding the submission of the written request to the Board, so that the principal balance on-deposit in the permanent maintenance fund can be verified. The funds to be used for the infrastructure repair(s) and/or capital improvement(s) will be based as a percentage of the principal amount, with no more than twenty percent (20%) of the principal balance being authorized for disbursement by the Board.
- E. Upon reported completion of the work by either third-party vendor(s) or the cemetery company employees, Board staff will conduct an on-site re-inspection of the cemetery property to verify that the infrastructure repair(s) and/or capital improvement(s) have been satisfactorily completed as originally submitted to the Board. The on-site re-inspection shall be reported back to the Board.
- F. If a third-party vendor performed the work and was not paid in advance by the cemetery company, then the Board shall submit to the permanent maintenance fund trustee(s) and/or bank or financial institution in which the trusted funds are deposited, a written authorization for payment to be made from the principal balance of the permanent maintenance fund directly to the vendor who completed the work. The disbursement amount shall not exceed the percentage of principal approved by the Board for the project.
 - 1. If a third-party vendor performed the work and was paid in advance by the cemetery company, either in whole or in part, then the Board shall submit to the permanent maintenance fund trustee(s) and/or bank or financial institution in which the trusted funds are deposited, a written authorization for payment to be made from the principal balance of the permanent maintenance fund, to the cemetery company. The disbursement amount shall not exceed the percentage of principal approved by the Board for the project. If the final amount due for the project is greater than the amount approved for disbursement by the Board, then it shall be the cemetery company's responsibility to pay the third-party vendor any remaining amount still due, over and above the amount approved by the Board. The Board is not a direct party to the agreement between the

cemetery company and the third-party vendor, and will not be held liable for a breach of contract, failure to pay, or any other cause of action that may arise out of the agreement between the cemetery company and the third-party vendor.

2. If cemetery company employee(s) performed the work rather than a third-party vendor, then the cemetery company must present to the Board, written documentation of all expenses (materials, supplies, equipment rental expenses, etc.) that were incurred to complete the infrastructure repair(s) and/or capital improvement(s). The Board shall review the actual expenses incurred by the cemetery company, and Board staff shall submit to the permanent maintenance fund trustee(s) and/or bank or financial institution in which the trusted funds are deposited, a written authorization for payment to be made to the cemetery company from the principal balance of the permanent maintenance fund. The amount for disbursement shall be limited to actual expenses incurred, and shall not exceed the percentage of principal approved by the Board for the project.
3. Upon disbursement of the funds from the principal, the cemetery company shall not make another request for additional withdrawals from the principal for at least ten (10) years from the date of the disbursement.

Section 5. Effective Date

This Rule shall apply to cemetery companies who hold a perpetual care cemetery permit. This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.

BILL BOOKER
CHAIRMAN

STATE BOARD OF EMBALMERS,
FUNERAL DIRECTORS,
CEMETERIES, AND BURIAL
SERVICES

DATE

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1226

By: Representative Crawford
By: Senator Irvin

For An Act To Be Entitled

AN ACT TO MODIFY THE CEMETERY ACT FOR PERPETUALLY
MAINTAINED CEMETERIES; TO AMEND THE INSOLVENT
CEMETERY GRANT FUND ACT; AND FOR OTHER PURPOSES.

Subtitle

TO MODIFY THE CEMETERY ACT FOR
PERPETUALLY MAINTAINED CEMETERIES; AND TO
AMEND THE INSOLVENT CEMETERY GRANT FUND
ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-17-1013, concerning the permanent
maintenance fund of a perpetually maintained cemetery under the Cemetery Act
for Perpetually Maintained Cemeteries, is amended to add additional
subsection to read as follows:

(g)(1) No more than one (1) time every ten (10) years, a cemetery
company may make a withdrawal from the permanent maintenance fund for the
purpose of making infrastructure repairs and capital improvements to the
perpetual care cemetery.

(2) A withdrawal under subdivision (g)(1) of this section shall
not be made without prior approval from the board.

SECTION 2. Arkansas Code § 20-17-1029 is repealed.

~~20-17-1029. Cemetery advisory boards Membership Organization
Authority.~~



~~(a) The Governor may create a cemetery advisory board for any cemetery purchased under § 20-17-1006 [repealed] to assist the state and the municipality or county where the cemetery is located in achieving the efficient management, operation, maintenance, and preservation of the cemetery.~~

~~(b)(1) A cemetery advisory board shall be composed of seven (7) members appointed by the Governor as follows:~~

~~(A) Three (3) members shall be owners of lots in the cemetery or have demonstrated an interest in the preservation of the cemetery;~~

~~(B) Three (3) members shall be owners or operators of a licensed cemetery or funeral home in this state; and~~

~~(C) One (1) member shall be a person actively engaged, by profession or as a volunteer, in activities promoting the historic preservation of cemeteries in the local community.~~

~~(2)(A) The terms of the members shall be for three (3) years.~~

~~(B) Members shall serve until their successors are appointed and qualified.~~

~~(C) The initial members shall draw lots so that three (3) members serve a term of one (1) year, two (2) members serve a term of two (2) years, and two (2) members serve a term of three (3) years.~~

~~(D)(i) Vacancies for any unexpired term of a member shall be filled in the same manner as the original appointment of the vacating member.~~

~~(ii) An appointee to fill a vacancy shall serve for the unexpired term and is eligible for reappointment.~~

~~(3) Members shall biennially elect a chair, a vice chair, and a secretary from the membership, whose duties shall be those customarily exercised by the officers or specifically designated by the cemetery advisory board.~~

~~(4) No member shall be liable for any damages unless it is made to appear that he or she has acted with corrupt and malicious intent.~~

~~(5) Members shall serve without compensation.~~

~~(6) A cemetery advisory board shall meet as often as it deems necessary for the purpose of carrying out its duties under this section.~~

~~(c) A cemetery advisory board may:~~

~~(1) Establish itself as a section 501(c)(3) corporation under the Internal Revenue Code of 1986, as it existed on January 1, 2007;~~

~~(2) Raise private funds for the benefit of the cemetery general fund and the permanent maintenance fund;~~

~~(3) Recruit volunteers; and~~

~~(4)(A) Advise the State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services and the municipality or county where the cemetery is located concerning long term goals and plans for efficient cemetery operation and beautification.~~

~~(B) No policy of a cemetery advisory board relating to long term goals and plans for efficient cemetery operation and beautification shall be adopted unless the municipality or county where the cemetery is located approves the policy.~~

SECTION 3. Arkansas Code § 20-17-1305(b), concerning an eligible organization under the Insolvent Cemetery Grant Fund Act, is amended to read as follows:

(b) An eligible organization ~~may be~~ is eligible to receive a grant under this subchapter for the care and improvement of a perpetual care cemetery if the perpetual care cemetery:

~~(1) Has been in court ordered receivership or conservatorship for at least five (5) years;~~

~~(2) Has historie~~ historical significance to the local community or the State of Arkansas; ~~and or~~

~~(3)~~ (2) Is insolvent or in financial distress.

SECTION 4. TEMPORARY LANGUAGE. DO NOT CODIFY. Rules.

(a) The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services shall promulgate rules necessary to implement this act.

(b)(1) When adopting the initial rules to implement this act, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before January 1, 2022; or

(B) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(2) The board shall file the proposed rule with the Legislative

1 Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so
2 that the Legislative Council may consider the rule for approval before
3 January 1, 2022.

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6 **APPROVED: 3/15/21**
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EXECUTIVE SUMMARY

Proposed Rule Regarding Withdrawal from Permanent Maintenance Fund

PURPOSE

The State Board of Embalmers, Funeral Directors, Cemeteries, and Burial Services ("Board") seeks Governor Hutchinson's review of a proposed rule allowing cemetery companies to make withdrawals from the principal of its permanent maintenance fund (trust fund) no more than one time every ten years.

BACKGROUND

Pursuant to Ark. Code Ann. § 20-17-1013(g), cemetery companies are allowed to make a one-time withdrawal from the principal balance of the trust fund in order to fund infrastructure repairs and to make capital improvements.

KEY POINTS

The proposed rule:

- Defines "infrastructure repairs" and "capital improvements";
- Provides the process by which cemetery companies can make such a request; and
- Requires Board oversight of the expenditure of the funds.

DISCUSSION

Until the passage of Act 343, perpetual care cemeteries were required to preserve the principal of the permanent maintenance fund. This means that cemeteries can only use accrued interest income to provide routine mowing and other maintenance such as road repairs, drainage improvements, and repairs to other items such as fences, mausoleums, and benches. For many cemeteries, the annual accrued interest income is only enough to pay for one or two months of mowing, and certainly does not cover the cost of all maintenance and repairs that need to be completed.

The passage of Act 343 will allow perpetual care cemeteries to make a withdrawal from the principal balance once every ten years, with Board oversight. The funds from these withdrawals will be used to pay for only long term projects such as repairing and preserving roads, fences, other structures, and irrigation systems. The rule places a cap on the withdrawal amount of 20% of the principal balance, and requires Board approval of expenditures and Board inspection of the work performed.

RECOMMENDATION

We recommend that the Withdrawal rule be approved as proposed by the Board.