

February 21, 2011

The Honorable Steve Huebert, Chairperson  
House Committee on Local Government  
Statehouse, Room 149-S  
Topeka, Kansas 66612

Dear Representative Huebert:

**SUBJECT:** Fiscal Note for HB 2240 by House Committee on Local Government

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2240 is respectfully submitted to your committee.

HB 2240 would amend existing law concerning trust funds for cemetery corporations. The bill would require any cemetery corporation entering into a written preneed merchandise contract to establish and maintain a cemetery merchandise trust fund. A cemetery corporation entering into a preneed merchandise installment contract that allows the purchaser to make installment payments would be entitled to retain all purchaser payments until an amount equal to 25.0 percent of the purchase price is received, and thereafter, would deposit 100.0 percent of each payment into the cemetery merchandise trust fund.

Deposits to the cemetery merchandise trust fund would be made within 30 days following the calendar month after the monies are received. Within 30 days following the end of each calendar month, the cemetery corporation would be required to provide the trustee and the Secretary of State a report of all sales, verified deliveries, deposits, and distributions of preneed cemetery merchandise, preneed burial products, preneed services, and burial spaces. If no sales, deliveries, deposits, or distributions were made, the cemetery corporation must provide the trustee and the Secretary of State a report with this information. All reports must include any total amounts and the names and addresses of the trust officers in charge of the accounts.

The bill would require a cemetery to establish a permanent maintenance fund and would allow a cemetery corporation and trustee to maintain 15.0 percent of the purchase price or no less than \$25 of each burial space sold. If the cemetery corporation allows the purchaser of the burial space to make installment payments, 15.0 percent of the installment payment must be deposited into the permanent maintenance fund. The cemetery corporation would be required to obtain prior written approval from the Secretary of State before any trust instrument is terminated, transferred, or amended. The cemetery corporation also would be required to provide the Secretary of State a copy of the new or amended trust instrument before it takes effect.

The requirements for reporting both the cemetery merchandise fund and the permanent maintenance fund are the same. The trustee must submit monthly reports to the Secretary of State that include: deposits, withdrawals, all interest, dividends and income earned, capital gains or capital losses, and capital gains taxes paid from capital gains. Within 30 days following December 31 of each year, the trustee would be required to report the allocation of distributable earnings to the Secretary of State. The trustee would be required to invest the trust funds according to the provisions of the Uniform Prudent Investor Act. Annually, as of December 31, the trustee of the permanent maintenance fund would be required to disperse the income for the permanent maintenance fund, less reasonable costs, taxes, and fees, to the cemetery corporation. The trustee must report the calculation of the dispersed income to the Secretary of State within 30 days from December 31. If a court determines that a trust instrument is in conflict with Kansas statutes, that portion of the underlying trust instrument would be null and void. The trust instrument would comply with the cemetery merchandise contracts laws and take effect upon written approval of the Secretary of State.

A trustee would be allowed to appoint one or more agents to provide administrative or investment advisory services, provided the trustee does not assign or delegate the liability and fiduciary responsibilities owed to the cemetery merchandise trust fund or permanent maintenance funds to another financial institution or agent. Deposits to the fund would be carried in the name of the cemetery corporation and the purchasers of the preneed cemetery merchandise contracts. Upon delivery of any preneed cemetery merchandise, preneed burial products, or preneed services, the trustee would be required to pay the market value allocated to the merchandise, products, or services delivered. The trustee would be required to sign an affidavit stating he or she has read, understands, and agrees to the provisions of this bill. The statement would include the names of the trustee, the cemetery corporation as trustor, and the date the trust instrument would become effective.

By accepting the trusteeship of the cemetery merchandise trust fund or permanent maintenance fund, the trustee would submit to the jurisdiction of the courts of this state and retain all liability and fiduciary responsibility for managing and administering the cemetery merchandise trust fund or permanent maintenance fund in accordance with the provisions of this bill. Any cemetery corporation which refuses or neglects to establish or maintain a cemetery merchandise trust fund or permanent maintenance fund for a period of 60 days after written demand is made by the Secretary of State would be deemed to have forfeited its cemetery corporation. Misuse of either fund would be a severity level seven, non-person felony. The bill would require the Secretary of State to promulgate the rules and regulations for providing oversight and auditing of permanent maintenance funds and cemetery merchandise trust funds.

The bill would also require the Secretary of State to maintain the confidentiality of all information gathered during the investigation or examination of any cemetery corporation or trustee. Information could be disclosed to officers and members of the board of directors of the cemetery corporation being audited, the Attorney General, and the appropriate official for the municipality in which the cemetery is located. These provisions would expire on July 1, 2016, unless the Legislature acts to reauthorize the provisions prior to this date.

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Page 3—Fisc\_Note\_Hb2240

Under HB 2240, if the market value of a permanent maintenance fund is less than \$100,000, the fund proceeds must be held in segregated federally insured certificates of deposit or business savings accounts from a Kansas financial institution. If the cemetery's permanent maintenance fund has a market value of less than \$100,000, the cemetery corporation would be required to comply with the reporting requirements of this Act. If the market value of the permanent maintenance fund is more than \$100,000, the cemetery corporation would be required to establish and maintain the permanent maintenance fund in an irrevocable trust with a trustee. The trustee would be allowed to invest, reinvest, exchange, retain, sell, and manage the moneys within the fund. The trustee would be reasonably compensated for its services out of the income of the fund.

No monies, other than income from the trust, would be paid to the cemetery corporation by the trustee, except upon the written permission of the Secretary of State. The taxes and costs would be paid from earnings of the fund prior to the distribution of the income. If all income is exhausted, any remaining capital gains tax liability may be paid out of the realized capital gains before the balance reverts to principal.

The Secretary of State indicates that passage of HB 2240 would have no fiscal effect on its budget.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", written in a cursive style.

Steven J. Anderson, CPA, MBA  
Director of the Budget

cc: Christy Myers, Secretary of State's Office  
Megan Pinegar, Attorney General's Office  
Melissa Wangemann, Kansas Association of Counties  
Larry Baer, League of Municipalities