

# House Bill 3344

Sponsored by Representative EVANS

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would let a cemetery opt to use the total return distribution method to fund its care. (Flesch Readability Score: 61.6).

Authorizes a cemetery authority to elect to use the total return distribution method to fund endowment care of the cemetery.

## A BILL FOR AN ACT

1  
2 Relating to the total return distribution method for endowment care cemeteries; creating new pro-  
3 visions; and amending ORS 97.825, 97.830 and 97.835.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 6 of this 2025 Act are added to and made a part of ORS 97.810**  
6 **to 97.865.**

7 **SECTION 2. As used in ORS 97.810 to 97.865:**

8 (1) "Average fair market value" means:

9 (a) The average of the fair market value of endowment care fund assets on the last day  
10 of the current business year and the last day of each of the two preceding business years;  
11 or

12 (b) If there are fewer than two preceding business years, the average of the fair market  
13 value as of the last day of all business years for the entire term of the trust fund.

14 (2) "Net income distribution" means the distribution of interest and dividend income  
15 earned by an endowment care fund minus permissible fees and taxes.

16 (3) "Total return distribution" means the distribution of funds from an endowment care  
17 fund based on the average fair market value of fund assets multiplied by the total return  
18 percentage.

19 (4) "Total return percentage" means the annual percentage set by the cemetery author-  
20 ity under section 5 of this 2025 Act.

21 **SECTION 3. (1) Distributions from endowment care funds may be made using the net**  
22 **income distribution method or the total return distribution method.**

23 (2)(a) A cemetery authority shall elect a distribution method by delivering written in-  
24 structions to the trustee of the fund no later than 30 days prior to the beginning of the cal-  
25 endar year in which the authority will begin using the distribution method.

26 (b) If the trustee does not receive written notice from the cemetery authority of the  
27 distribution method elected, the trustee shall calculate and make distributions using the net  
28 income distribution method.

29 (3) A cemetery authority must notify the Department of Consumer and Business Ser-  
30 vices, in accordance with section 4 of this 2025 Act, of its intent to begin using the total re-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1 turn distribution method.

2 (4) The distribution method and, if applicable, the total return distribution rate shall re-  
 3 main in effect unless the cemetery authority notifies the trustee and the department of the  
 4 authority's intent to change the method.

5 (5) A cemetery authority that has converted to using the total return distribution  
 6 method may elect to reconvert to the net income distribution method by submitting notifi-  
 7 cation of the election to the trustee and the department with documents and other infor-  
 8 mation supporting the reconversion, including a copy of the trust agreement and the  
 9 proposed effective date of the reconversion.

10 **SECTION 4.** (1) A cemetery authority intending to use the total return distribution  
 11 method must notify the Department of Consumer and Business Services on or before No-  
 12 vember 1 of the year prior to the year in which the authority intends to begin using the  
 13 method.

14 (2) The cemetery authority or the trustee of the endowment care fund shall provide the  
 15 department with the following:

16 (a) A written investment policy whose investment goals are:

17 (A) First, to achieve principal growth through permissible investments under law for  
 18 endowment care funds; and

19 (B) Second, to achieve current income.

20 (b) An amended endowment care trust agreement that clearly shows the election of the  
 21 total return distribution method.

22 (c) A written distribution policy establishing the total return percentage and initial esti-  
 23 mated average fair market value, using the most recent month end balances as the estimate  
 24 for the current year, signed by the cemetery authority or trustee.

25 **SECTION 5.** (1)(a) A cemetery authority that has elected to use the total return distrib-  
 26 ution method shall set a total return percentage that does not exceed four percent of the  
 27 average fair market value of the endowment care fund assets.

28 (b) The cemetery authority may reduce the total return percentage but may not increase  
 29 it unless the authority provides to the trustee of the endowment care fund documentation  
 30 demonstrating a rate of return of the endowment care fund assets over the prior three years  
 31 that supports the increase.

32 (2) Expenses that could be deducted from income under this chapter if the trust were  
 33 not a unitrust may not be deducted from a total return distribution.

34 (3) In accordance with ORS 129.225, the trustee may, in the trustee's discretion, deter-  
 35 mine:

36 (a) The manner in which the total return distribution will be prorated for a year in which  
 37 a trust's right to payments begins or ends;

38 (b) The effect on trust asset valuation of distributions or other payments from, or con-  
 39 tributions to, the trust;

40 (c) Whether or how to estimate the value of nonliquid assets; and

41 (d) Any other matters necessary for the proper administration of the trust.

42 **SECTION 6.** (1) The Department of Consumer and Business Services may take corrective  
 43 measures, including, but not limited to, reducing a cemetery authority's total return per-  
 44 centage, or requiring a distribution of only net income, under any of the following circum-  
 45 stances:

1 (a) The average fair market value of the trust fund for the current three-year period has  
 2 declined by 10 or more percentage points compared to the previous three-year period.

3 (b) The fair market value of the trust fund assets at the end of a business year is less  
 4 than 80 percent of the sum of the fair market value of the trust fund, as of the first day of  
 5 the calendar year in which the endowment care fund began making distributions using the  
 6 total return distribution method, plus all deposits made to the trust fund since the first day.

7 (c) After review of the annual trust fund report or an on-site examination, the depart-  
 8 ment determines that there is an uncorrected financial or investment related endowment  
 9 care fund deficiency.

10 (d) The department determines that the trustee of the endowment care fund is not able  
 11 to demonstrate sufficient knowledge and expertise regarding the effective implementation  
 12 of distributing income for the maintenance of the cemetery using this method.

13 (2) The department may decide not to impose corrective measures under the circum-  
 14 stances described in subsection (1) of this section if it finds that:

15 (a) The circumstances are due to unusual or temporary factors that are not within the  
 16 control of the cemetery authority or the trustee and that could not have been reasonably  
 17 anticipated;

18 (b) The current investment policy for the trust fund is reasonably designed to protect the  
 19 trust fund from further declines in fair market value; or

20 (c) The exception appears to be both necessary and appropriate for the continued pro-  
 21 tection of the endowment care fund.

22 **SECTION 7.** ORS 97.825 is amended to read:

23 97.825. (1)(a) If the cemetery authority fails to remit to the trustee or trustees, in accordance  
 24 with the law, the funds herein provided for endowment and special care, or fails to expend the net  
 25 income **or total return distribution** from the funds and generally care for and maintain any portion  
 26 of a cemetery entitled to endowment care, any of the following may bring an action for a mandatory  
 27 injunction or for an appointment of a receiver to sue for, take charge of and expend the net income  
 28 **or total return distribution:**

29 (A) Any three lot owners, or a lot owner's next of kin, heir or personal representative whose  
 30 lots are entitled to endowment care;

31 (B) Any one lot owner, or the lot owner's next of kin, heir or personal representative, whose lot  
 32 is entitled to special care;

33 (C) The district attorney of the county where a lot described in this subsection is located; or

34 (D) A local government with jurisdiction over the county or municipality where a lot described  
 35 in this subsection is located.

36 (b) The suit may be filed in the circuit court of the county where the cemetery is located in  
 37 order to compel the cemetery authority or the appointed receiver to make the expenditure of the  
 38 net income **or total return distribution** from the endowment care fund for the purposes set out in  
 39 ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990.

40 (2) When the Director of the Department of Consumer and Business Services has reason to be-  
 41 lieve that a cemetery endowment care fund does not conform to the requirement of law, or when the  
 42 director has reason to believe that any cemetery is operating in violation of ORS 97.810 or 97.820,  
 43 or when the director has sent an endowment care cemetery a notice of delinquency to make any  
 44 report to the director required by ORS 97.810, the director shall, as soon thereafter as reasonable,  
 45 give notice of the foregoing to the trustee or trustees of the cemetery endowment care fund, the

1 cemetery authority, the Attorney General of Oregon and the State Mortuary and Cemetery Board.

2 (3) Within 120 days after the receipt of such notice, the Attorney General shall institute suit in  
 3 the circuit court of any county of this state in which such cemetery is located, for a mandatory in-  
 4 junction against further sales of graves, plots, crypts, niches, burial vaults, markers or other ceme-  
 5 tery merchandise by such cemetery or for the appointment of a receiver to take charge of the  
 6 cemetery, unless the Attorney General shall prior to that time be notified by the director that such  
 7 failure to conform to the requirements of the law or to report has been corrected.

8 (4) The Attorney General may delay instituting any suit brought under subsection (3) of this  
 9 section for no more than an additional 30 days if, in the discretion of the Attorney General after  
 10 consulting with the director, it appears to the Attorney General:

11 (a) That the failure to conform to the requirements of the law or to report will be corrected;  
 12 and

13 (b) That no harm to the public will occur during the additional 30 days.

14 (5) If a trustee fails to perform the duties of the trustee under ORS 97.810 to 97.920, the trustee  
 15 shall be liable for any damage resulting from that failure to any lot owners or the next of kin, heirs  
 16 at law or personal representatives of such lot owners.

17 (6) The court may award reasonable attorney fees, costs and disbursements to the prevailing  
 18 party in an action under this section.

19 **SECTION 8.** ORS 97.830 is amended to read:

20 97.830. (1)(a) The principal of all funds for endowed care shall be invested, from time to time  
 21 reinvested and kept invested.

22 (b) If a trust agreement imposes upon the trustee or custodian the duty to direct the investment  
 23 or reinvestment of endowed care funds, the trustee or custodian shall perform this duty governed  
 24 by ORS 130.750 to 130.775.

25 (c) *[Otherwise]* **If a trust agreement does not impose upon the trustee or custodian the**  
 26 **duty described in paragraph (b) of this subsection,** the cemetery authority, governed by ORS  
 27 130.750 to 130.775, shall direct the investment and reinvestment of endowed care funds in the time  
 28 or savings deposits of the custodian bank or savings association.

29 (2)(a) **Except where a cemetery authority has elected to use the total return distribution**  
 30 **method,** the principal of invested endowed care funds shall never be voluntarily reduced, but shall  
 31 be maintained separate and distinct by the trustee or custodian from all other funds *[except that it*  
 32 *shall be proper to commingle]*.

33 (b) **Notwithstanding paragraph (a) of this subsection,** endowment care funds **may be**  
 34 **commingled** with special care funds.

35 (c) The payment of charges chargeable against principal under ORS chapter 129 or of other  
 36 expenses necessarily incurred in the administration of the trust in accordance with subsection (1)  
 37 of this section shall not constitute a voluntary reduction of principal.

38 (3)(a) The net income earned **or total return distribution** shall be used solely for the general  
 39 care and maintenance of the cemetery property entitled to endowment care, as stipulated in the  
 40 resolution, bylaw and other action or instrument by which the fund was established, and in such  
 41 manner as the cemetery authority may from time to time determine to be in the best interests of  
 42 such endowed property.

43 (b) Such net income **or total return distribution** shall never be used for the improvement or  
 44 embellishment of undeveloped property offered for sale.

45 **SECTION 9.** ORS 97.835 is amended to read:

1 97.835. (1) The trustee shall have no duty whatsoever to:

2 (a) Operate, maintain or [to] supervise the general maintenance of any endowment fund  
3 cemetery[, *and the trustee shall have no duty whatsoever to*];

4 (b) Enforce collection of any of the trust funds either from the purchasers of lots, or from the  
5 cemetery authority[, *and the trustee shall have no duty whatsoever to*]; **or**

6 (c) See to the application of the net income **or total return distribution** after payment of the  
7 net income **or total return distribution** to the cemetery authority.

8 (2) The trustee shall be entitled to rely without liability upon the affidavit of the cemetery au-  
9 thority showing the amount payable to the trustee as endowment care funds.

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