

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 17-0361.01 Jery Payne x2157

HOUSE BILL 17-1096

HOUSE SPONSORSHIP

Liston, Landgraf, Lawrence, Navarro, Sias

SENATE SPONSORSHIP

Smallwood,

House Committees

Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ENDOWMENT CARE FUNDS ADMINISTERED FOR**
102 **CEMETERY AUTHORITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill authorizes the fiduciary of an endowment fund to distribute principal, such as capital gains, under a unitrust election. This facilitates investing in stocks.

The bill authorizes a cemetery authority to request that the fiduciary convert an endowment fund to a unitrust. The fiduciary and cemetery authority must agree on the terms of conversion, the distribution

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

method, and the distribution rate. The distributions must be made on a monthly, quarterly, semi-annual, or annual basis, but the default is monthly. The unitrust must comply with certain current unitrust laws.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 12-12-109, **amend**
3 (7); and **add** (8) as follows:

4 **12-12-109. Endowment care fund.** (7) (a) The endowment care
5 fund, for all purposes, shall constitute a nonprofit irrevocable trust fund.
6 THE FIDUCIARY SHALL NOT DISTRIBUTE PRINCIPAL FROM AN ENDOWMENT
7 CARE FUND; EXCEPT THAT PRINCIPAL MAY BE DISTRIBUTED FROM THE
8 FUND TO THE EXTENT THAT A UNITRUST ELECTION IS IN EFFECT UNDER
9 SUBSECTION (8)(a)(II) OF THIS SECTION.

10 (b) Endowment care is a provision for the benefit and protection
11 of the public by preserving and keeping cemeteries from becoming
12 unkempt and places of reproach and desolation in the communities in
13 which they are situated. ~~The income and increments and gains from such~~
14 ~~funds are~~ FROM THE FUND IS for the benefit of the public for the purposes
15 provided for in ~~such trusts~~ THE TRUST AGREEMENT.

16 (8) (a) THE CEMETERY AUTHORITY OF AN ENDOWMENT CARE
17 CEMETERY MAY CHOOSE THE DISTRIBUTION AS INCOME OF EITHER OF THE
18 FOLLOWING FROM THE ENDOWMENT CARE FUND:

19 (I) ALL NET INCOME, INCLUDING NET REALIZED CAPITAL GAINS; OR
20 (II) AN AMOUNT SET AND ADMINISTERED IN ACCORDANCE WITH
21 SECTION 15-1-404.5 FOR UNITRUST ELECTIONS.

22 (b) (I) A CEMETERY AUTHORITY MAY REQUEST THAT THE
23 FIDUCIARY CONVERT AN ENDOWMENT CARE FUND TO A UNITRUST. TO
24 TAKE EFFECT DURING A SPECIFIC CALENDAR YEAR, THE REQUEST MUST BE

1 MADE BY DELIVERING WRITTEN INSTRUCTIONS TO THE FUND'S FIDUCIARY
2 BY NOVEMBER 2 OF THE YEAR BEFORE THE TRUST IS CONVERTED. ONCE
3 THE FIDUCIARY AND THE CEMETERY AUTHORITY AGREE ON THE TERMS
4 AND CONDITIONS OF CONVERSION, THE DISTRIBUTION METHOD, AND THE
5 DISTRIBUTION RATE, THESE TERMS REMAIN IN EFFECT UNTIL THE
6 FIDUCIARY AND THE CEMETERY AUTHORITY AGREE TO A CHANGE.

7 (II) DISBURSEMENTS FROM THE TRUST SHALL BE MADE ON A
8 MONTHLY, QUARTERLY, SEMI-ANNUAL, OR ANNUAL BASIS, AS AGREED
9 UPON BY THE CEMETERY AUTHORITY AND THE FIDUCIARY. IF THE
10 FIDUCIARY AND CEMETERY AUTHORITY ARE IN AGREEMENT, THE
11 FIDUCIARY NEED NOT OBTAIN ANY COURT APPROVAL OR NOTIFY A COURT
12 TO SET OR CHANGE THE TIMING OF DISBURSEMENTS.

13 (III) THE FIDUCIARY IS SUBJECT TO SECTION 15-1-404.5 WHEN
14 ADMINISTERING AN ENDOWMENT CARE FUND FOR WHICH THE UNITRUST
15 ELECTION HAS BEEN MADE; EXCEPT THAT, IN THE EVENT OF A CONFLICT
16 BETWEEN THIS SECTION AND SECTION 15-1-404.5, THIS SECTION
17 CONTROLS.

18 (c) IF THE FIDUCIARY DOES NOT RECEIVE WRITTEN INSTRUCTIONS
19 FROM THE CEMETERY AUTHORITY INFORMING THE FIDUCIARY OF THE
20 METHOD OF INCOME DISTRIBUTION CHOSEN, THEN THE FIDUCIARY SHALL
21 CALCULATE AND DISBURSE THE EARNED NET INCOME UNDER SUBSECTION
22 (8)(a)(I) OF THIS SECTION ON A MONTHLY BASIS.

23 **SECTION 2. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2018 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.