

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES
CEMETERY BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : WISCONSIN CEMETERY BOARD
WISCONSIN CEMETERY BOARD : ADOPTING RULES, CHS. CB 3 - 5
: (CLEARINGHOUSE RULE 12-021)

The Cemetery Board proposes an order to repeal chs. SPS 52 to 54; and to create chs. CB 3 to 5, relating to warehouses storing cemetery pre-need merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 157.11 (9g), 157.19 , 440.92 (7), Stats.

Statutory authority:

Sections 157.19 (2) (d), 227.11 (2) (a), 440.905 (2), 440.92 (7), Stats.

Explanation of agency authority:

2007 Wisconsin Act 174 transferred authority for regulation of warehouses that store cemetery merchandise sold under a preneed sales contract, changes of trustees for care and preneed trust funds, and alternative care fund investments from the department of safety and professional services to the cemetery board. Thus, ch. 157 and s. 440.905, Stats., grant sole authority for implementation of the laws related to these regulatory areas to the cemetery board.

Plain language analysis:

These proposed rules implement the statutory changes that resulted from the passage of 2007 Wis. Act 174. The rules transfer to the cemetery board the authority to regulate: warehouses that store cemetery merchandise sold under a preneed sales contract; changes of trustees for care and preneed trust funds; and alternative care fund investments from the department. The administrative code provisions that Act 174 affected are currently located in chs. SPS 52 to 54. To reflect the transfer of authority effected by Act 174, this rule-making proposes to repeal chs. SPS 52 to 54 and replace them with newly created chs. CB 3-5.

The substance of the rules in chs. SPS 52 to 54 will not change by this proposal. These proposed rules amend those chapters only to reflect the transfer of regulatory authority and other minor information updates such as addresses referenced, etc.

Proposed ch. CB 4 adds some provisions that are closely related to those in existing ch. SPS 53. First, new s. CB 4.015 defines “financial institution,” as used in the chapter, to have the meaning set forth in s. 705.01 (3), Stats. That definition appears in s. 157.19 (1), Stats., and applies to all of s. 157.19, which is the enabling statute for the rules set forth in current ch. SPS 53 and proposed ch. CB 4. The cemetery board adds this definition to the existing rules for increased clarity regarding what constitutes a financial institution within the meaning of that chapter.

Existing rules require an affidavit from only the transferee financial institution in a change of trustee of care funds or preneed trust funds. Sections SPS 53.03 (1) (d), (2) (d). The proposed rules will require an affidavit from the transferor financial institution as well. Sections CB 4.03 (1) (dm), (2) (dm). The transferor’s affidavit must confirm that all deposits into the funds to be transferred were timely, and that there have been no withdrawals of the principal. The transferor’s affidavit will assure that the requested change of trustee is not for purposes of hiding impropriety in the transferor institution’s management of the funds. The cemetery board is authorized to impose the requirement for the transferor’s affidavit under ss. 157.19 (d) and 440.905 (2). The assurance provided from the transferor’s affidavit will significantly enhance the board’s ability to oversee change-of-trustee transactions and the department’s enforcement of the board’s rules, both of which will result in better protection of the funds involved.

Finally, given the cemetery board’s quarterly meeting schedule, a full-board determination of a change-of-trustee request within 60 days of its receipt, as required by current s. SPS 53.02 (4), may not be feasible. To facilitate timely determinations of such requests, proposed rule s. CB 4.02 (4) provides for a determination by the board’s designee if necessary.

Summary of, and comparison with, existing or proposed federal regulation:

There are no existing or proposed federal regulations related to the regulatory areas of the proposed rules.

Comparison with rules in adjacent states:

Illinois:

The Illinois statutes, called the Illinois Compiled Statutes (ILCS), charge the state’s Department of Financial and Professional Regulation (DFPR) with governing cemeteries pursuant to the Cemetery Oversight Act. The DFPR’s powers include the authority to promulgate rules for the administration and enforcement of that Act. Section 225 ILCS 411/5-25. Licensed cemetery authorities may accept any gift or payment for the care of the cemetery or a cemetery lot to establish a trust fund for the specified purpose. Section 225 ILCS 411/15-5 (a). The cemetery authority acts as trustee of amounts received until depositing them with a corporate fiduciary. Section 225 ILCS 411/15-5 (b). Under s. 225 ILCS 620/1-5.05, “corporate fiduciary” means a

trust company, such as a bank or other financial institution, or an individual or entity that has obtained a certificate of authority under the Corporate Fiduciary Act to exercise trust powers.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3173&ChapterID=24>

The Illinois State Comptroller regulates pre-need contract salespersons, pre-need contracts, and cemetery care or pre-need trust funds under both the Illinois Funeral or Burial Funds Act, ch. 225 ILCS 45, and the Illinois Pre-Need Cemetery Sales Act, ch. 815 ILCS 390. A salesperson may change the trustee of pre-need trust funds upon no less than 30 days' prior notice to the Comptroller. Section 225 ILCS 45/2 (g). When a seller changes trustees, the trustee must provide written notice of the change to the Comptroller at least 28 days prior to the effective date of the change. Sections 225 ILCS 45/2 (g), 815 ILCS 390/16 (b).

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1302&ChapterID=24>

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2343&ChapterID=67>

Neither the Illinois Comptroller's administrative rules, nor those of the DPFMR specifically address changes of trustees of cemetery care or pre-need trust funds. Title 38, Part 610, Ill. Admin. Code.

<http://www.ilga.gov/commission/jcar/admincode/038/03800600sections.html>,

<http://www.ilga.gov/commission/jcar/admincode/038/03800610sections.html>,

<http://www.ilga.gov/commission/jcar/admincode/068/068parts.html>

Iowa:

In Iowa, the commissioner of insurance regulates cemeteries and funeral merchandise and services under the Cemetery and Funeral Merchandise and Funeral Services Act and the Iowa Cemetery Act. Sections 523A.801, 523I.201, Iowa Code. The commissioner of insurance is an officer in the insurance division of Iowa's department of commerce. Section 505.1, Iowa Code. A seller of cemetery or funeral merchandise, or funeral services must deposit any moneys paid by the purchaser into a trust fund that the seller has previously established for such purposes. Section 523A.201.

Cemeteries may sell interment rights, merchandise related to the final disposition of human remains, or memorial or special care, and may or may not place moneys received from such sales in a trust fund. Section 523I.102 4., 20., 28., 47. Perpetual care cemeteries must maintain an irrevocable trust fund for the general care of a cemetery. The care fund trust must provide for the appointment of initial and successor trustees. Sections 523I.806 1., 523I.809 1., Iowa Code. A trustee for care funds may, but need not, be a financial institution. The cemetery may transfer care funds from one financial institution to another. Section 523I.810 1. a., 3., Iowa Code. The care fund's trustee may hold money or property designated for the special care of a particular interment space, or cemetery section or building as specified by the purchaser. Section 523I.804 4., Iowa Code.

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>,

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

Iowa's administrative rules regulating cemeteries are located at ch. 191—18, Iowa Admin. Code. Section 191-18.1. (2) of the code reiterates the provisions regarding a care funds trust stated in

ss. 523I.806-.810, Iowa Code. Rules associated with the Cemetery and Funeral Merchandise and Funeral Services Act found at chs. 191—101-102, Iowa Admin. Code.

<http://search.legis.state.ia.us/nxt/gateway.dll/ar/iac?f=templates&fn=default.htm>,

<http://search.legis.state.ia.us/nxt/gateway.dll?f=templates&fn=default.htm>

Michigan:

In Michigan, ownership and operation of cemeteries is regulated by the Cemetery Commissioner, an officer in the Department of Licensing and Regulatory Affairs (LARA), formerly the Department of Labor and Economic Growth. Michigan Compiled Laws (MCL) 456.522, s. 2.

(k). Cemeteries are required to establish and maintain an irrevocable endowment and perpetual care trust fund with one or more financial institutions that will serve as trustee for the portion of the fund allocated to them. A cemetery may remove and replace a trustee at any time, subject to the consent of the commissioner and to the trustee agreement. MCL 456.536 s. 16 (4).

<http://legislature.mi.gov/doc.aspx?mcl-Act-251-of-1968>

LARA administers the Prepaid Funeral and Cemetery Sales Act, under which it registers sellers and providers of funeral or cemetery services or merchandise sold pursuant to prepaid contracts, and regulates such contracts. MCL 328.213 s. 3. (o), 328.215 s. 5. (d), 328.216. All funds received pursuant to prepaid contracts must be held in escrow by an escrow agent for the benefit of the contract beneficiary. MCL 328.222 s. 12. (1). The statutes specify with particularity, based on whether the contract price is guaranteed or non-guaranteed, who or what entity may serve as the escrow agent: if non-guaranteed, either the contract seller or provider, or another of the seller's or provider's choice; if either guaranteed or non-guaranteed, a depository, a trust company, a non-profit corporation or association of at least 250 funeral establishments, or a non-profit of at least 30 cemeteries; if guaranteed and includes funeral services, selected by the provider of those services; if guaranteed and no funeral services, selected by any provider that is a party to the contract. Contract sellers and providers may not serve as the escrow agent for guaranteed price contracts. MCL 328.222 s. 12. (4) (b), (5). Providers and escrow agents may change the escrow depository at any time, with or without cause, and without the approval of any other party. The contract buyer must be notified of a change of depository or escrow agent. MCL 328.224 s.14. (3).

<http://legislature.mi.gov/doc.aspx?mcl-Act-255-of-1986>

The cemetery commissioner's administrative rules are codified at R 456.101-.196, Mich. Admin. Code. These rules contain provisions related to endowed care funds, but they do not discuss changes of trustees for such funds.

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=45600101&Dpt=LG&RngHigh=

The administrative rules corresponding to the Michigan Prepaid Funeral and Cemetery Sales Act are found at R 339.11-.47, Mich. Admin. Code. Although various of the rules therein reference the escrow, deposit, and investment of moneys received for cemetery merchandise, none directly address changes in escrow agents.

http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Single&Admin_Num=33900011&Dpt=&RngHigh=33923405

Minnesota:

Cemeteries in Minnesota may be either public or private. The ownership and operation of a public cemetery is governed by either a corporation or association formed for such purposes, and must provide for the appointment of at least three board members or trustees. Section 306.02, Minn. Stats. A cemetery association may establish a permanent fund for the general care, maintenance, and improvement of the cemetery. Section 306.31, Minn. Stats. The association must either appoint a board of trustees for the fund, consisting of not less than three and not greater than five resident landowners, or designate a trust company within the state. Section 306.32, Minn. Stats. Trustees are appointed for life except if a trust company, which may be replaced by a board of trustees or another trust company, as the association trustees see fit. Section 306.32, Minn. Stats.

https://www.revisor.mn.gov/statutes/?id=306&view=chapter&year=2011&keyword_type=all&keyword=cemetery&format=pdf,

The total of all moneys paid pursuant to a contract for the preneed purchase of burial goods or funeral or burial services must be held in trust with a Minnesota financial institution until performance of the terms of the contract upon the death of the trust's beneficiary. Unless otherwise specified by the purchaser, the trust must be revocable in its entirety. 149A.97, subd. 3., Minn. Stats. Such trusts must be carried in a separate account with the depositor funeral provider and the purchaser named as trustees. The purchaser may at any time prior to the death of the beneficiary designate another trustee. 149A.97, subd. 3a. (8), subd. 4. Minn. Stats.

https://www.revisor.mn.gov/statutes/?id=149A&view=chapter&year=2011&keyword_type=all&keyword=cemetery&format=pdf

Minnesota has no administrative rules related to cemetery care other than those regulating the construction of new care facilities, 4660.1200, Minn. Admin. Rules; charitable, religious, or educational organizations, including their tax exempt status, 8130.6200, Minn. Admin. Rules; and caskets, burial vaults, and urns for cremains used for human burial, 8130.6300, Minn. Admin. Rules. No rules address trust funds or changes of trustees thereof.

https://www.revisor.mn.gov/rules/?id=4660.1200&keyword_type=all&keyword=cemetery+care,
https://www.revisor.mn.gov/rules/?id=8130.6200&keyword_type=all&keyword=cemetery,
https://www.revisor.mn.gov/rules/?id=8130.6300&keyword_type=all&keyword=cemetery

A search of the Minnesota Administrative Rules for regulation of preneed or prepaid merchandise or services produced no results. 8130.6200

https://www.revisor.mn.gov/search/doc_result.php?search=all&keyword_type=all&keyword=pre-need+preneed+prepaid+&stat_year1=2011&stat_year2=2011&stat_chapter=&laws_session1=87&laws_session2=87&laws_chapter=&laws_display=art&rule=1&rule_year1=2010&rule_year2=2010&rule_chapter=&rule_agency%5B%5D=&court_year1=2010&court_year2=2010&court_type%5B%5D=&submit_keyword=GO

Summary of factual data and analytical methodologies:

The comparison information with the rules in adjacent states was obtained by thorough review of their laws and rules, and from direct contact with those states by e-mail or telephone.

The transfer of authority for regulation of warehouses that store cemetery pre-need merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments was prompted by legislative action that became effective on April 9, 2008. The purpose of the proposed rules is to bring the existing rules into conformity with the enabling statutes, and thus, neither collection of factual data, nor the use of analytical methodologies were necessary.

Implementation of requirements for ensuring the accuracy, integrity, objectivity, and consistency of data used in rule preparation and related analysis:

No use of factual data or analytical methodologies was required in the preparation of this proposal or its related analysis.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

Pursuant to s. IV, 3. a., EO # 50, the rules proposed herein were posted on both the state's and the department's administrative rules websites for 14 days to solicit comments regarding the rule's potential economic impact on businesses, business sectors, professional associations, local government units, or potentially interested parties. In addition, e-mail solicitations were sent to several potentially interested parties. No responses to any of the solicitations were received.

The department concludes that the proposed rules will have no economic impact on small businesses. This proposal tracks legislation that became effective on April 9, 2008, approximately four years ago. The statutory change has thus been in place long enough to produce the resulting economic or fiscal impact experienced by private businesses or public entities, if any, and for such impact to have been fully absorbed by those entities as a part of routine operations.

Fiscal estimate and Economic Impact Analysis:

The Economic Impact Analysis, which includes the Fiscal Estimate, is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Greg.Gasper@[wisconsin.gov](mailto:Greg.Gasper@wisconsin.gov), or by calling (608) 266-8608.

Agency contact person:

Kris Anderson, Paralegal, Department of Safety and Professional Services, Division of Board Services, 1400 E. Washington Ave., Rm. 117, P.O. Box 8935, Madison, Wisconsin 53708; telephone (608) 261-2385; email at Kristine1.Anderson@Wisconsin.gov.

Place where comments may be submitted and deadline for submission:

Comments may be submitted to Kris Anderson, Paralegal, Department of Safety and Professional Services, 1400 E. Washington Ave., Rm. 117, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to Kristine1.Anderson@Wisconsin.gov. Comments must be received on or before the date and time of the public hearing for inclusion in the record of rule-making proceedings. A public hearing on this proposal will be held at the department on March 13, 2012, in Rm. 121A, at 9:45 a.m.

TEXT OF RULE

SECTION 1. Chapters SPS 52 to 54 are repealed.

SECTION 2. Chapter CB 3 is created to read:

CHAPTER CB 3

WAREHOUSES STORING CEMETERY MERCHANDISE SOLD UNDER
A PRE-NEED SALES CONTRACT

CB 3.01 Authority. This chapter is adopted pursuant to ss. 227.11, 440.905, and 440.92 (7), Stats.

CB 3.02 Applications. (1) FORMS. Applications for approval of a warehouse to store cemetery merchandise sold under a preneed sales contract shall be made on forms provided by the department and shall be delivered through the mails or otherwise to the department's office.

Note: Application forms may be obtained upon request from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) COMPLETE ANSWERS; CERTIFICATION. No application shall be processed until all questions appearing on the application are fully completed and certified as accurate, and all required documents are received by the department.

(3) DETERMINATION OF APPROVAL. The board or its designee shall provide the applicant with its determination upon the application within 60 days after receipt of the completed application and required documents.

CB 3.03 Approval of warehouses located in this state. The board shall approve a warehouse located in this state only if the person who operates the warehouse is licensed as a public warehouse keeper by the department of agriculture, trade and consumer protection under ch. 99, Stats. Proof of licensure as a public warehouse keeper shall be made through the submission of a copy of the current license with the application.

CB 3.04 Approval of warehouses located outside this state. The board shall approve a warehouse located outside this state upon the following conditions:

(1) Submission of proof that the warehouse is authorized to store cemetery merchandise within its state of location. Proof of such authorization may be made through the submission of a copy of the current license, permit, certificate, registration or other document issued by the agency regulating warehouses in that state, or through the submission of such other information or statements acceptable to the board.

(2) (a) The filing with the board of a bond furnished by a surety company authorized to do business in this state in an amount that is sufficient to guarantee the delivery of cemetery merchandise to purchasers under preneed sales contracts.

(b) The bond shall be payable to the department of safety and professional services for the benefit of purchasers of stored property or their assignees.

(c) The amount of the bond shall be in an amount approved by the board, and in no case less than 100% of the wholesale value of the cemetery merchandise that is stored and to be transported to this state as of the date of the application.

(d) The bond shall remain in effect throughout the time that the warehouse remains approved by the board and the warehouse keeper shall submit a copy of each bond renewal certificate to the board.

CB 3.05 Term of approval. An approval of a warehouse by the board entitles the warehouse to store cemetery merchandise sold under a preneed sales contract for a period of one year following the issuance of the approval.

CB 3.06 Cancellation of approval. (1) Any approval previously granted by the board may be cancelled upon the occurrence of any of the following:

(a) The failure to maintain the license in this or any other state necessary to operate a warehouse.

(b) The failure of a warehouse located outside this state to maintain the bond required under this chapter. When the board determines that a bond is insufficient, or if the bond lapses or is canceled, the warehouse shall correct the defect within 30 days after written notice from the board and, if the defect is not corrected within that period, the approval of the warehouse automatically rescinds at the expiration of the 30 day period.

(2) The owner or operator of a warehouse shall notify the board within 30 days after the occurrence of any of the events described in sub. (1).

Note: A current list of the names and addresses of all approved warehouses may be obtained from the department's Division of Professional Credential Processing, 1400 E. Washington Ave., P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 3. Chapter CB 4 is created to read:

CHAPTER CB 4

CHANGE OF TRUSTEE OF CARE FUNDS AND PRE-NEED TRUST FUNDS

CB 4.01 Authority. This chapter is adopted pursuant to ss. 157.11, 157.19, 227.11, and 440.905, Stats.

CB 4.015 Definition. In this chapter, "financial institution" has the meaning set forth in s. 705.01 (3), Stats.

CB 4.02 Change of trustee; applications. (1) APPROVAL REQUIRED. A cemetery authority or preneed seller who deposits care funds in a financial institution pursuant to s.157.19 (2) (a), Stats., shall obtain written approval of the board before changing the trustee of a care fund or preneed trust fund.

(2) FORMS. Requests for approval of change of trustee shall be made on forms provided by the department and shall be delivered through the mails or otherwise to the board.

Note: Forms may be obtained upon request from the Department of Safety and Professional Services, Division of Professional Credential Processing, 1400 East Washington Avenue, Madison, Wisconsin 53708.

(3) COMPLETE ANSWERS; CERTIFICATION. No request for approval shall be processed until all questions appearing on the application are fully completed, the applicant has signed a statement confirming the accuracy of the information provided in the application, and all required documents are received by the board.

(4) DETERMINATION OF APPROVAL. The board or its designee shall provide the applicant with its determination upon the request within 60 days after receipt of the completed application and required documents.

CB 4.03 Standards for approval. (1) CARE FUNDS. The board or its designee may grant approval for a change of trustee of a care fund to a cemetery authority applying for the change of trustee if the cemetery authority submits evidence that the rights and interests of the beneficiary of the care fund will be adequately protected if the change is approved. Such evidence shall include, but is not necessarily limited to:

(a) The names and addresses of the financial institutions from whom and to whom the care fund is to be transferred.

(b) A statement of the reason for requesting the change of trustee.

(c) The amount to be transferred, the manner or instrument by which the transfer is to be made, and the anticipated date the transfer is to be effectuated.

(d) An affidavit from an officer or director of the financial institution from whom the transfer is requested that it is authorized to act as a financial institution and is in good standing in this state. The affidavit shall confirm that all deposits into the care funds being transferred to a different trustee were timely, and that the principal has not been withdrawn.

(e) An affidavit from an officer or director of the financial institution to whom the transfer is requested that it is authorized to act as a financial institution, and is in good standing in this state.

(f) A statement of any costs which will accrue to the balance of the care fund upon the change of trustee, as well as a statement of the nature and anticipated amounts of any service charges, administrative fees or other costs which will be imposed against the care fund by the proposed trustee.

(2) PRENEED TRUST FUNDS. Preneed sellers applying for the change of trustee of a preneed trust fund shall submit evidence that the rights and interests of the purchaser under the preneed sales contract will be adequately protected if the change is approved, including but not necessarily limited to:

(a) The names and addresses of the financial institutions from whom and to whom the preneed trust fund is to be transferred.

(b) A statement of the reason for requesting the change of trustee.

(c) The amount to be transferred, the manner or instrument by which the transfer is to be made, and the anticipated date the transfer is to be effectuated.

(d) An affidavit from an officer or director of the financial institution from whom the transfer is requested that its license is in good standing in this state. The affidavit shall confirm that all deposits into the care funds being transferred to a different trustee were timely, and that the principal has not been withdrawn.

(e) An affidavit from an officer or director of the financial institution to whom the transfer is requested that it is authorized to act as a financial institution, and is in good standing in this state.

(f) A statement of any costs which will accrue to the balance of the preneed fund upon the change of trustee, as well as a statement of the nature and anticipated amounts of any service

charges, administrative fees or other costs which will be imposed against the care fund by the proposed trustee.

4.04 Compliance with terms of approval. The board may approve a change of trustee upon such terms and conditions as deemed necessary to assure that the rights and interests of the beneficiary or purchaser will be adequately protected.

4.05 Verification of deposit. Within 30 days after the transfer of the care fund or preneed trust fund, the trustee shall submit information to the board verifying the transfer, including the amount deposited, the date the deposit was made, and the account number of the fund.

SECTION 4. Chapter CB 5 is created to read:

CHAPTER CB 5

APPROVAL OF ALTERNATIVE CARE INVESTMENT FUNDS

CB 5.02 Intent. The intent of this chapter is to ensure that cemetery authorities that are required to register with the board maintain intact the principal amount in care funds in order to generate sufficient income to maintain cemeteries in perpetuity and to ensure that cemeteries in Wisconsin do not become a financial burden to taxpayers. It is also the intent to prohibit the officers, trustees, and the immediate family of the cemetery authority from directly profiting from the investments that are made by and on behalf of it.

5.03 Definitions. As used in this chapter:

(1) “Alternative investment” means the use of care funds received from the sale of cemetery lots by a cemetery authority to purchase investment instruments, rather than depositing the care funds in a financial institution under s. 157.19, Stats., or with the treasurer of the county or city in which the cemetery is located.

(2) “Care funds” has the meaning given in s. 157.061 (1m), Stats.

(3) “Board” means the cemetery board.

5.04 Criteria. (1) A cemetery authority shall give due consideration to both long term and short term cash flow needs in selecting alternative investments. The following classes of alternative investments are permissible:

(a) Corporate bonds or bonds or other instruments of indebtedness issued or guaranteed by governmental units in the United States, provided that the bonds or instruments of indebtedness are rated AA or above by Standard & Poor’s or by Moody’s Investors Services. Once one or more of these instruments drops below an A rating and remains below that rating for 2 consecutive quarters, the cemetery authority shall divest those instruments within 180days or proceed under par. (e).

(b) Publicly traded preferred or common stock of regulated utilities in the United States whose debt is rated AA or above by Standards & Poor's or by Moody's Investors Services. Once the debt rating of the issuing utility drops below an A rating and remains below that rating for 2 consecutive quarters, the cemetery authority shall divest those instruments within 180 days or proceed under par. (e).

(c) Fully insured certificates of deposit issued by banks, savings and loan associations, or credit unions located in the United States which are federally insured. Certificates of deposit which are only partially insured are permissible in commercial banks rated BC or above by Thomson Bank Watch, Inc.

(d) Mutual funds, if at least 80% of monies in the mutual fund are invested in one or more of the instruments in pars. (a) to (c).

(e) Such other investments which the board determines will provide safety equal to or greater than the investment classes described in pars. (a) to (d).

(2) A cemetery authority shall consider diversification of investments. No cemetery authority may purchase or otherwise invest in one of the instruments in sub. (1) (a) to (c) if the percentage of the care fund invested in the instruments sold by a specific corporation, governmental unit or financial institution immediately after such purchase or investment will exceed 50% of the total market value of the care fund, except for investments in or guaranteed by the United States government and except for fully insured certificates of deposit in sub. (1) (c).

(3) No cemetery authority may invest in any entity or company in which an officer or trustee of the cemetery authority is a shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the entity or company.

(4) No cemetery authority may invest in any entity or company in which a spouse or child of an officer or trustee of the cemetery authority or other family member who receives one-half of his or her support from an officer or trustee is a shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of securities issued by the entity or company.

5.05 Procedures. (1) An officer, a trustee who has been elected pursuant to s. 157.062, Stats., or a certified public accountant acting on behalf of the cemetery authority shall file an affidavit with the board which identifies the class and amount of each investment and certifies that each investment is in compliance with the criteria in s. CB 5.04.

(2) If the affidavit submitted to the board pursuant to sub. (1) lists investments in classes other than those described in s. CB 5.04 (1) (a) to (d), the affidavit shall be accompanied by a written statement by a licensed investment advisor or a licensed securities broker, stating his or her belief that such investments will provide safety equal to or greater than the investment classes described in s. CB 5.04 (1) (a) to (d).

(3) If the investment proposal meets the criteria set forth in s. CB 5.04, the board may issue a letter of approval. A decision by the board not to approve an alternative investment may be appealed under ch. SPS 1.

(4) Affidavits are effective for one year and shall be filed with the annually. The affidavit shall certify compliance for the period since the last affidavit was filed except that the initial affidavit need only certify compliance as of the date it is made.

(5) Alternative investments made prior to November 1, 1991, are subject to board approval and the board may require divestiture of any alternative investment which does not meet the criteria in s. CB 5.04. The cemetery authority shall divest such alternative investments within 180 days following notification by the board that an alternative investment does not meet the criteria.

(6) After board approval is obtained, the cemetery authority need not obtain further approval to increase the number of shares or units in the same security or investment if the shares or units meet the criteria set forth in s. CB 5.04 (1) (a) to (d), (3) and (4).

SECTION 5. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2), Stats.

(END OF TEXT OF RULE)

Dated _____

Agency _____

Chairperson
Cemetery Board

CB 3-5 CR 12-021 (Transfer authority) Draft to legislature