



## STATE OF WISCONSIN

Department of Safety and Professional Services  
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Madison WI 53703

**Governor Scott Walker      Secretary Dave Ross**

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### CEMETERY BOARD

**09:30 a.m., March 13, 2012**

**Room 121A, 1400 East Washington Avenue, Madison, WI  
Contact: Berni Mattsson - 608-266-8741**

#### OPEN SESSION – CALL TO ORDER – ROLL CALL

##### **A. Adoption of Agenda (1-2)**

##### **B. Approval of Minutes – December 6, 2011 (3-5)**

##### **C. Bureau Director Matters**

- 1) **Board Appointments for 2012 (7)**
- 2) Annual Policy Review: Board Member Guidebook (9-41)

##### **D. Legislation/Administrative Rule Matters**

- 1) **Public Hearing on proposed rule-making CB 3-5 (43-59)**
- 2) **Review and Discuss public and legislative clearinghouse comments related to CB 3-5 (61)**

##### **E. Presentation of Proposed Stipulations, Final Decisions and Orders by the Division of Enforcement including any received after printing of the agenda**

- 1) **10 RLC 001-Rienzi Cemetery and Rienzi Cemetery Association (63-71)**

##### **F. Board Discussion Items including any received after printing of agenda**

- 1) Division of Enforcement Matters
- 2) Education and Examination Issues Matters
- 3) Credentialing Matters
- 4) Practice Questions/Issues
- 5) Liaison Reports
- 6) Speaking Engagement, Travel, Public Relation Requests

##### **G. Informational Items**

- 1) **2011 AB 523 (73-77)**
- 2) **2011 AB 547/SB453 (79)**
- 3) Conversion of Documents to Electronic Format (81-82)

##### **H. New Business**

##### **I. Public Comments**

**CONVENE TO CLOSED SESSION to deliberate on cases following hearing (s. 19.85(1) (a), Stats.; consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats., to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.; and, to confer with legal counsel (s. 19.85(1)(g), Stats.)**

**J. Deliberation of Proposed Stipulations, Final Decisions and Orders including any received after printing of the agenda**

- 1) **10 RLC 001-Rienzi Cemetery and Rienzi Cemetery Association**

**K. Deliberation of other items including any received after printing of agenda**

- 1) Case Closings
  - (a) **Deliberation of 11 RLC 008 (85-87)**
- 2) Case Status Report
- 3) Proposed Decisions
- 4) Summary Suspensions
- 5) Objections and Responses to Objections
- 6) Complaints
- 7) Administrative Warnings
- 8) Matters Relating to Costs
- 9) Monitoring Cases
- 10) Appearances from Requests Received or Renewed
- 11) Examination Issues
- 12) Application Issues
- 13) PAP Cases
- 14) Motions
- 15) Miscellaneous Items

**L. Consulting with Legal Counsel**

**RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION**

**M. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate**

**N. Other Board Business**

**O. Next Meeting Date: June 19, 2012**

**ADJOURNMENT**

**PRESENT:** E. Glen Porter, III; W. Ed Greenfield; Cecelia Timmons; Timothy Stanley; and Kathleen Cantu

**BY LIVE MEETING:** Mary Lehman

**STAFF PRESENT:** Berni Mattsson, Executive Director; Sandy Nowack, Legal Counsel; David Carlson, Bureau Assistant; and other Department Staff for portions of the meeting

**OTHERS PRESENT:** Ed Preston Barnes and Paul Rosenfeldt, Rienzi Cemetery Association.

### **CALL TO ORDER**

E. Glen Porter, III called the meeting to order at 9:35 a.m. A quorum of six members was present.

### **APPROVAL OF AGENDA**

**MOTION:** Cantu moved, seconded by Stanley, to approve the Agenda as amended below. Motion carried unanimously.

- Insert “late add” under **Practice Questions and Issues**, F4b.
- Add “Rule Draft” document for item F5a after page 9 of the agenda.

### **APPROVAL OF MINUTES OF SEPTEMBER 27, 2011**

**MOTION:** Timmons moved, seconded by Cantu, to approve the Minutes of September 27, 2011 as published. Motion carried unanimously.

### **ADMINISTRATIVE REPORT**

Berni Mattsson introduced herself as the new Executive Director and introduced David Carlson as the new Bureau Assistant.

### **PRESENTATION OF PROPOSED STIPULATIONS, FINAL DECISIONS AND ORDERS BY THE DIVISION OF ENFORCEMENT**

09 RLC 008 – Kenosha County Cemetery Association

Attorney: Heather Curnutt

Case Advisor: Mary Lehman

Sandy Nowack noted that Attorney Curnutt has waived presentation of the proposed stipulation as the matter is still under litigation. Ms. Curnutt will however be available to the Board should they need to consult with her in closed session.

### **CREDENTIALING MATTERS**

Porter noted that the Annual Report Review Committee has found that a number of previously licensed cemeteries have not filed their annual credentials. The committee will forward the names of those cemeteries to Mick Daly with a request that he contact them and ask for them to file their reports.

## **PRACTICE QUESTIONS/ISSUES**

**Reports from Cemetery Authorities**-Porter said that in the past several years, several larger cemetery authorities have been filing one report for all the cemeteries that they own. Porter said that they should be filing one report for each cemetery they operate.

**MOTION:** Cantu moved, seconded by Lehman that the Board's state that its interpretation of WI Statutes requires cemetery authorities with multiple cemeteries to file a Cemetery Authority Annual Report for each individual cemetery (rather than filing a consolidated report). Further, Legal Counsel is directed to draft a FAQ discussing this requirement and for publication on the DSPPS website. Motion carried unanimously.

**Cemetery Association Transfer of Cemetery to Municipality**-A memo Sandy Nowack drafted on this issue for a legislator's office is provide for members. It has been suggested the Board may wish to have this posted to the DSPPS website as a FAQ document.

**MOTION:** Stanley moved, seconded by Greenfield that Glen Porter be designated as the Boards liaison to work with Legal Counsel to edit an FAQ document pertaining to this issue for publication on the DSPPS website. Motion carried unanimously.

## **LEGISLATION/ADMINISTRATIVE RULE MATTERS**

**Discussion of CB 3, 4, 5 draft rule text incorporating amended Ch. 157, WI Stats., provisions**-Sandy Nowack asked that Board members review the draft rule and provide Kris Anderson with comments as soon as possible as the new rule making process is more involved. Kris Anderson discussed language regarding audits which is included in the rule draft. Kris Anderson also reviewed the timeline for rule making. If the Board wants the rule to go to the Legislature by March 15<sup>th</sup>, a public hearing would need to be held prior to the Board's next scheduled meeting on March 13<sup>th</sup>. The Board would also need to approve a draft of the rule by the end of December or early January.

**MOTION:** Stanley moved, seconded by Greenfield requesting staff to reschedule the March 13, 2012 Cemetery Board meeting to an earlier date in order for the Board to meet deadlines for the rule making process related to CB 3, 4, 5. Motion carried unanimously.

**MOTION:** Cantu moved, seconded by Greenfield to appoint Stanley and Porter as rule-making liaisons to work with DSPPS staff to review and approve the rule draft. Motion carried unanimously.

## **ANNUAL REPORT REVIEW COMMITTEE UPDATE AND RECOMMENDATIONS**

Porter provided an overview of the review process and noted that the goal is for the Board to approve the form today so it can be ready for use beginning January 1, 2012. The Board reviewed the draft report form and made several changes which are incorporated in the attached document using track changes.

**MOTION:** Lehman moved, seconded by Timmons to adopt the new Cemetery Annual Report form included in the agenda packet with the changes incorporated in the attached document. The Board further directed DSPPS to format the final form and post it to the DSPPS website by December 31, 2011. Motion carried unanimously.

**APPLICATION TO CONVEY CEMETERY LAND - RIENZI CEMETERY ASSOCIATION**  
Ed Preston Barnes and Paul Rosenfeldt, Rienzi Cemetery Association provided background on their request to member so the Board.

**CONVENE TO CLOSED SESSION**

**MOTION:** Porter moved, seconded by Greenfield, to convene in closed session to deliberate on cases following hearing (s. 19.85(1) (a), Stats.); to consider closing disciplinary investigation with administrative warning (s. 19.85(1)(b), Stats. and 440.205, Stats.), to consider individual histories or disciplinary data (s. 19.85 (1)(f), Stats.); and, to confer with legal counsel (s. 19.85(1)(g), Stats.) Roll Call Vote: Roll Call Vote: Kathleen Cantu-yes; Ed Greenfield-yes; Mary Lehman-yes; Glen Porter III-yes; Timothy Stanley-yes and Cecelia Timmons-yes. Motion carried unanimously.

The Board convened into Closed Session at 11:25 a.m.

**RECONVENE TO OPEN SESSION**

**MOTION:** Timmons moved, seconded by Cantu, to reconvene in open session. Motion carried unanimously.

The Board reconvened into open session at 12:30 p.m.

**09 RLC 008 – KENOSHA COUNTY CEMETERY ASSOCIATION**

**MOTION:** Stanley moved, seconded by Timmons, to accept the proposed Stipulation, Final Decision and Order. Motion carried unanimously.

**CLOSING CASE 11 RLC 001**

**MOTION:** Greenfield moved, seconded by Lehman, to close case 11 RLC 001 for insufficient evidence. Motion carried unanimously.

**MOTION:** Stanley moved, seconded by Cantu, to have Attorney Varriale issue a letter of education to Fred Angerman informing him of the provisions of WI Stats. 445.125(1). Motion carried unanimously.

**APPLICATION TO CONVEY CEMETERY LAND - RIENZI CEMETERY ASSOCIATION**

**MOTION:** Greenfield moved, seconded by Cantu, to approve the request of the Rienzi Cemetery Association to convey cemetery land to the National Exchange Bank & Trust of Fond du Lac. Motion carried unanimously.

**ADJOURNMENT**

**MOTION:** Timmons moved, seconded by Cantu, to adjourn the meeting at 12:35 p.m. Motion carried unanimously.

**NEXT MEETING DATE:** To be determined by DSPS staff in consultation with Board.

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**State of Wisconsin  
Department of Safety and Professional Services**

**AGENDA REQUEST FORM**

<b>Name and Title of Person Submitting the Request:</b>  Michelle Solem		<b>Date When Request Submitted:</b>  2012	
		Items will be considered late if submitted after 5 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before meeting for all other boards</li> </ul>	
<b>Name of Board, Committee, Council:</b> All Boards			
<b>Board Meeting Date:</b> Various	<b>Attachments:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>How should the item be titled on the agenda page?</b> Board Appointments	
<b>Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	<b>Is an appearance before the Board being scheduled? If yes, by whom?</b>  <input type="checkbox"/> Yes by _____ (name)  <input checked="" type="checkbox"/> No	<b>Name of Case Advisor(s), if required:</b>	
<b>Describe the issue and action the Board should address:</b> Board appointments will be made by the newly elected chairperson for the 2012 calendar year.			
<b>If this is a "Late Add" provide a justification utilizing the Agenda Request Policy:</b>			
<b>Directions for including supporting documents:</b> 1. This form should be attached to any documents submitted to the agenda. 2. Late Adds must be authorized by a Supervisor, DOE Division Administrator, and Bureau Director. 3. Provide original documents needing Board Chairperson signature to the Bureau Director or Program Assistant prior to the start of a meeting.			
<b>Authorization:</b>			
Signature of person making this request		Date	
Supervisor (if required)		Date	
Division Administrator (if required)		Date	
Bureau Director signature (indicates approval to add late items to agenda)		Date	

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**State of Wisconsin  
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**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  David Carlson, Bureau Assistant		2) Date When Request Submitted: 02/15/2012 Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>	
3) Name of Board, Committee, Council, Sections:  Auctioneer Board			
4) Meeting Date:  3/13/2012	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page?  Annual Policy Review: Board Member Guidebook	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:  N/A	
10) Describe the issue and action that should be addressed:  Please review the Board Member Guidebook, sign the acknowledgement page to indicate your understanding of this document and submit your completed signature page to your Executive Director by April 13, 2012.  Your completed signature page can be mailed, scanned and e-mailed, or sent by fax to: Department of Safety and Professional Services Berni Mattsson, Executive Director 1400 E. Washington Ave Madison, WI 53703 E-mail: <a href="mailto:Berni.Mattsson@Wisconsin.gov">Berni.Mattsson@Wisconsin.gov</a> Fax: 608-267-3816			
11) Authorization			
<i>David Carlson</i>		02/15/12	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)    Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Executive Assistant prior to the start of a meeting.			

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# Department of Safety and Professional Services



## Division of Board Services Board Member Guidebook

# **Division of Board Services**

# **Board Member**

# **Guidebook**

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# Department Information

# The Department of Safety and Professional Services

## History:

The 2011-13 biennial budget, 2011 Wisconsin Act 32 created the Department of Safety and Professional Services (DSPS) by combining the Department of Regulation and Licensing (DRL) and the Divisions of Safety and Buildings and Environmental and Regulatory Services from the Department of Commerce.

Chapter 75, Laws of 1967, created DRL and attached to it 14 separate examining boards that had been independent agencies. The 1967 reorganization also transferred to the department some direct licensing and registration functions not handled by boards, including those for private detectives and detective agencies, charitable organizations, and professional fundraisers and solicitors.

DRL's responsibilities changed significantly since its creation. Initially, it performed routine housekeeping functions for the examining boards, which continued to function as independent agencies. Subsequently, a series of laws required the department to assume various substantive administrative functions previously performed by the boards and to provide direct regulation of several professions.

The DSPS Division of Safety and Buildings traces its roots to 1911 when the Legislature created the Industrial Commission in Chapter 485 to set standards for a safe place of employment. This "safe place" statute was extended in Chapter 588, Laws of 1913, to include public buildings, defined as "any structure used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public, or by three or more tenants." The commission adopted its first building code in 1914. Programs added over the years include plumbing, heating, ventilation, air conditioning, energy conservation, private on-site waste treatment systems, accessibility for people with disabilities, and electrical inspection and certification. These responsibilities and the job of administering various other laws relating to the promotion of safety in public and private buildings, including enforcing building codes, and the licensure of occupations such as electricians and plumbers, were ultimately assumed by the Department of Commerce.

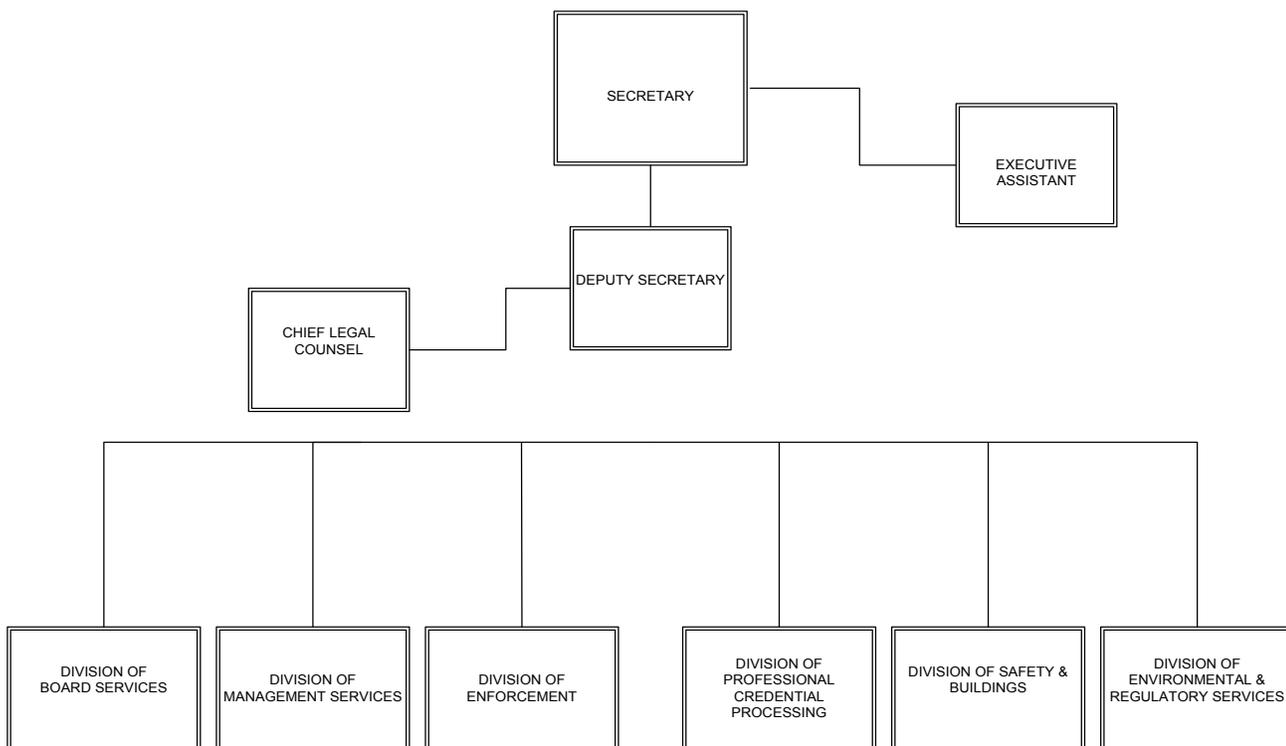
The DSPS Division of Environmental and Regulatory Services was created by 1995 Wisconsin Act 27 which transferred the PECFA program and the safety and buildings functions from the Department of Industry, Labor and Human Relations to the Department of Commerce.

# The Department of Safety and Professional Services

## Quick Facts

- Responsible for ensuring the safe and competent practice of licensed professionals in Wisconsin. The department also administers and enforces laws to assure safe and sanitary conditions in public and private buildings and regulates petroleum products and petroleum storage tank systems.
- Provides policy coordination and centralized administrative services for more than 70 boards, sections, councils, advisory committees, and direct licensing professions.
- Oversees the regulation of 200 types of credentials and specialty permits in more than 60 professional fields.
- Issues over 27,500 new credentials and renews more than 430,000 credential holders each biennium.
- Organized into six divisions and two offices:
  - Office of the Secretary
  - Division of Board Services
  - Division of Enforcement
  - Division of Environmental and Regulatory Services
  - Division of Management Services
  - Division of Professional Credential Processing
    - Office of Education and Examinations
  - Division of Safety and Buildings
- 379.6 full-time employees.
- Receives more than 2,500 consumer complaints per year.
- Verifies about 7,000 Wisconsin licenses per year to other states.

# The Department of Safety and Professional Services Organizational Structure



# **Division of Board Services**

## **Mission of DSPS and the Boards**

To protect the health, safety and well-being of the citizens of Wisconsin by ensuring the safe and competent practice of licensed professionals at the least cost to the state.

To ensure the availability of safe and competent professional services by:

- fairly administering education, experience and examination requirements;
- establishing professional practice standards;
- ensuring compliance by enforcing occupational licensing laws.

## **Division of Board Services-Board Staff**

17 staff in Board Services

1 Division Administrator

1 Program Assistant Supervisor

4 Executive Directors

4 Legal Counsel

4 Bureau Assistants

1 Adv-Paralegals

2 Paralegal

- There are approximately 300 board, council and committee members.
- A Bureau Director, Legal Counsel, and Bureau Assistant are assigned to each profession.
- The Division averages approximately 15 board, council and committee meetings each month.
- There are about 185 meetings scheduled each year.
- Provide the coordination and facilitation of a number of professional and administrative services to all of the regulatory boards, councils and committees.
- Provide administrative support.
- Coordinate and manage the business of each board, council or committee.
- Assist in facilitating the meetings.
- Provide professional services (analysis, evaluation and research).
- Coordinate drafting and implementation of laws, rules and policies.
- Coordinate board member travel and reimbursement processing.



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**DIVISION OF BOARD SERVICES**  
**BOARD ASSIGNMENTS**

<p><b>Tom Ryan, Executive Director</b>  <b>Sandy Nowack, Legal Counsel</b>  <b>Karen Rude-Evans, Bureau Asst</b>  <b>Shawn Leatherwood, Adv Paralegal</b></p>	<p><b>Denise Aviles, Executive Director</b>  <b>Yolanda McGowan, Legal Counsel</b>  <b>Michelle Solem, Bureau Asst</b>  <b>Kris Anderson, Paralegal</b></p>	<p><b>Dan Williams, Executive Director</b>  <b>Colleen Baird, Legal Counsel</b>  <b>Kimberly Wood, Bureau Asst</b>  <b>Sharon Henes, Paralegal</b></p>	<p><b>Berni Mattsson*, Executive Director</b>  <b>Lydia Thompson, Legal Counsel</b>  <b>David Carlson, Bureau Asst.</b>  <b>Kris Anderson/Sharon Henes, Paralegal</b></p>
<ul style="list-style-type: none"> <li>▪ Medical Examining Board           <ul style="list-style-type: none"> <li>▫ Athletic Trainers Affiliated Credentialing Board</li> <li>▫ Council on Physician Assistants</li> <li>▫ Dietitians Affiliated Credentialing Board</li> <li>▫ Occupational Therapists Affiliated Credentialing Board</li> <li>▫ Perfusionists Examining Council</li> <li>▫ Podiatrists Affiliated Credentialing Board</li> <li>▫ Respiratory Care Practitioners Examining Council</li> <li>▫ Massage Therapy &amp; Bodywork Therapy Affiliated Credentialing Board</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Accounting Examining Bd</li> <li>▪ Architects, Landscape Architects, Professional Engineers, Designers &amp; Land Surveyors Examining Board           <ul style="list-style-type: none"> <li>▫ Architects Section</li> <li>▫ Designers Section</li> <li>▫ Engineers Section</li> <li>▫ Landscape Architects Section</li> <li>▫ Land Surveyors Section</li> </ul> </li> <li>▪ Barbering &amp; Cosmetology Examining Board</li> <li>▪ Chiropractic Examining Bd</li> <li>▪ Crematory Authority Council</li> <li>▪ Funeral Directors Ex. Bd</li> <li>▪ Real Estate Board           <ul style="list-style-type: none"> <li>▫ RE Contractual Forms Advisory Committee</li> <li>▫ RE Curriculum &amp; Examination Council</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Controlled Substances Board</b>            (Lydia Thompson – Legal Counsel)</li> <li>▪ Geologists, Hydrologists &amp; Soil Scientists Examining Bd.           <ul style="list-style-type: none"> <li>▫ Geologists Section</li> <li>▫ Hydrologists Section</li> <li>▫ Soil Scientists Section</li> </ul> </li> <li>▪ Marriage &amp; Family Therapy, Professional Counseling, and Social Work Examining Bd.           <ul style="list-style-type: none"> <li>▫ Marriage &amp; Family Therapist Section</li> <li>▫ Professional Counselor Section</li> <li>▫ Social Worker Section</li> </ul> </li> <li>▪ Nursing, Board of           <ul style="list-style-type: none"> <li>▫ Examining Council on Licensed Practical Nurses</li> <li>▫ Examining Council on Registered Nurses</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Auctioneer Board</li> <li>▪ Cemetery Board</li> <li>▪ <b>Dentistry Examining Board</b></li> <li>▪ <b>Hearing &amp; Speech Examining Board</b> <ul style="list-style-type: none"> <li>▫ Council on Speech-Language Pathology &amp; Audiology            (Colleen Baird – Legal Counsel)</li> </ul> </li> <li>▪ Optometry Ex. Board</li> <li>▪ Real Estate Appr. Board*           <ul style="list-style-type: none"> <li>▫ REA App Adv Com</li> </ul> </li> <li>▪ Sign Language Interp. Council</li> </ul>
<ul style="list-style-type: none"> <li>▪ <b>Nursing Home Ad. Ex Bd</b>            (Colleen Baird – Legal Counsel)</li> <li>▪ Physical Therapy Ex. Bd</li> <li>▪ Radiography Ex. Bd</li> <li>▪ <b>Veterinary Ex. Bd</b></li> </ul>	<p><b>Direct Licensing:</b></p> <ul style="list-style-type: none"> <li>▪ Athletic Agents Adv. Com.</li> <li>▪ Private Detectives</li> <li>▪ Private Security Persons           <ul style="list-style-type: none"> <li>▫ Firearms Permits</li> <li>▫ Firearms Certifiers</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Pharmacy Examining Board</b>            (Lydia Thompson – Legal Counsel)</li> <li>▪ Psychology Examining Board</li> </ul>	<p><b>Direct Licensing:</b></p> <ul style="list-style-type: none"> <li>▪ Acupuncture</li> <li>▪ Licensed Midwives Advisory Committee</li> <li>▪ Music, Art &amp; Dance Therapy</li> <li>▪ Professional Employer Organizations</li> </ul>
<p><b>Direct Licensing:</b></p> <ul style="list-style-type: none"> <li>▪ Boxing</li> <li>▪ Home Inspectors</li> <li>▪ Interior Designers</li> <li>▪ Peddlers</li> <li>▪ Charitable Organizations</li> <li>▪ Professional Fund Raisers</li> </ul>	<p><b>Direct Licensing:</b></p> <ul style="list-style-type: none"> <li>▪ Behavioral Analysts</li> <li>▪ Sanitarians</li> <li>▪ Substance Abuse Counselors</li> </ul>	<p><b>Where indicated by the following, the Bureau Assistants differ from the staff listing:</b></p> <ul style="list-style-type: none"> <li>• Lydia – <b>Green</b></li> <li>• Sandy – <b>Purple</b></li> <li>• Colleen – <b>Orange</b></li> <li>• Karen – <b>Red</b></li> <li>• Michelle – <b>Yellow</b></li> <li>• Kim – <b>Blue</b></li> </ul>	<p>*Berni Mattsson also provides support to the Boards and Councils associated with the Division of Safety &amp; Buildings.</p>

# **Powers and Responsibilities**

## Powers of Regulatory Bodies

- **Examining Boards**

**Authority:**

- Set standards of professional competence and conduct for the professions.
- Prepare, conduct and administer examinations.
- Grant and deny credentials (licenses).
- Impose discipline.

**Appointed By:** Governor with Senate confirmation.

**Reimbursement:** Per Diem: \$25

Expenses: Actual and necessary expenses incurred in the performance of Examining Board duties.

- **Affiliated Credentialing Boards**

Bodies that are attached to an Examining Board to regulate professions that do not practice independently of the profession regulated by the Examining Board or that practice in collaboration with the profession regulated by the Examining Board.

**Authority:** With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the Affiliated Credentialing Board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, and takes disciplinary action against credential holders.

**Appointed By:** Governor with Senate confirmation.

**Reimbursement:** Per Diem: \$25

Expenses: Actual and necessary expenses incurred in the performance of Board duties.

- **Examining Councils and Councils**

**Authority:** Serve an Examining Board in an advisory capacity to:

- Formulate rules to be promulgated by the Examining Board or department for the regulation of the specific profession.

**Appointed By:** Some Councils have members appointed by the Governor and others have members appointed by an Examining Board. Senate confirmation is not required. The Governor has the authority to appoint all public members.

**Reimbursement:** Per Diem: No compensation

Expenses: Actual and necessary expenses incurred in the performance of Council duties.

- **Auctioneer and Real Estate Appraisers Boards**

**Authority:** Advisory in all matters, except:

- Screening complaints.
- Imposing discipline.

**Appointed By:** Governor with Senate confirmation.

**Reimbursement:** Per Diem: \$25

Expenses: Actual and necessary expenses incurred in the performance of Examining Board duties.

- **Direct Licensing Advisory Committees and Screening Panel;**

- No examining board.
- The Secretary of the Department directly regulates the profession or occupation.
- The Secretary has authority to appoint committee and panel members.
- Committee and panel members serve at the discretion and pleasure of the Secretary.
- The Committee or panel members make recommendations and advise the Secretary on issues relating to the specific profession

**Appointed By:** Department Secretary

**Reimbursement:** Per Diem: No compensation

Expenses: Actual and necessary expenses incurred in the

### **Responsibilities of a Board Member**

- You are a public official who is dedicated to public service. You are willing to sacrifice your time and tolerate inconvenience, frustration, and scheduling conflicts to be available for board service.
- You have major responsibilities to the public and credential holders.
- You ARE NOT an advocate for private interest or professional groups.
- You must represent the highest standards of ethical and professional conduct.
- You must strive to avoid any relationship, activity or position that may influence, directly or indirectly, the performance of your official duties as a board member.
- You cannot serve as spokesperson for the board unless properly designated by the board.
- You must make public (and recuse yourself from) any conflict of interest that exists to ensure the integrity of the board and all of its decisions.
- You must comply with the rules of confidentiality, at all times, in dealings outside the board meeting.

### **Importance of Public Members**

- You are the voice of the public.
- You expand the range of perspectives available for higher quality and more creative board action.
- You balance decisions that might otherwise favor one faction of the regulated group over another.
- You make the governing board more responsive to the public it affects.
- You reduce the potential for board decisions to be professionally biased.
- You lend credibility to board accessibility and decisions.
- Public Member Concerns:
  - Being intimidated by professional members' experience in the field.
  - May impede board activity if technical issues are not understood.
  - Afraid to ask questions for fear of slowing down the meeting.
  - Professional members not treating public members as Board peers.

## **Responsibilities of the Board Chair**

- Recognize board members are entitled to speak or propose motions.
- Restate the motion after it has been seconded, then open for discussion.
- Close discussion and put motions to a vote. Restate the motion exactly as it was made or amended before calling for the question.
- Announce the result of the vote immediately. A tie vote defeats a motion requiring a majority of those voting. The chair may vote to make or break a tie.
- Avoid entering into any controversy or interfering with legitimate motions.
- Maintain order and proper procedure by making necessary rulings promptly and clearly.
- Expedite board business in every way compatible with the rights of the board members. You can allow brief remarks on motions, advise board members how to take action (proper motion or form of motion), or order proposed routing action without a formal vote (“If there is no objection, the minutes will stand approved as read. Hearing no objection, so ordered”).
- Protect the board from frivolous motions whose purpose is to obstruct the board’s business. You can refuse to entertain such motions. Never adopt such a course, however, merely to expedite business.
- Guard the board’s time by having board members vote to adopt an agenda at the beginning of the meeting. Follow the agenda faithfully. Do not permit unauthorized interruptions by spectators.

## **What Makes A Successful Board Member?**

- Recognition that the goal of the board is the protection of the public.
- Embracing role as a public servant.
- Common sense and a willingness to ask questions.
- Commitment to attendance.
- Willingness to devote time and effort to the work of the board.
- Open .
- Team player.
- Fairness.
- An orderly approach to decision making.
- Ability to set aside personal/business interests.

### **Board Members Should Avoid:**

- Obsession with a single issue.
- Self-serving by bringing own agenda to the table.
- Always taking the “contrarian” view—just for show.
- Expounding on strongly held opinions that are rarely backed by fact or research.
- Unpredictable participation or attendance.

### **Disappointments Experienced As Board Members:**

- Personal goals for improvement of the profession have not been realized.
- The public has not been served fairly.
- Lack of effort and dedication on the part of other board members.
- The “wheels” of government do not move fast enough.

### **Dealing With The Volatile World Of Meetings**

Some of the ideas are best undertaken by the Chair; however, you should feel free to help any meeting to progress. After all, why should you allow your time to be wasted?

- If a participant strays from the agenda item, call him/her back: “We should deal with that separately, but what do you feel about the issue X?”
- If there is confusion, you might ask: “Do I understand correctly that ...?”
- If you do not understand, say so: “I don’t understand that, would you explain it a little more; or, do you mean X or Y?”
- If a point is too vague ask for greater clarity: “What exactly do you have in mind?”
- If the speaker begins to ramble, wait until an inhalation of breath and jump in: “Yes, I understand that such and such, does anyone disagree?”
- If someone interrupts (someone other than the rambler), you should suggest that: “We can hear your contribution after Phoebe is finished.”
- If people chat, you might either simply state your difficulty in hearing/concentrating on the real speaker or ask them a direct question: “What do you think about that point?”
- If someone gestures disagreement with the speaker (e.g., by a grimace), then make sure they are brought into the discussion next: “What do you think Phoebe?”
- If there is an error, look for a good point first: “I see how that would work if X Y Z, but what would happen if A B C?”
- If you disagree, be *very* specific: “I disagree because .....

## Ethics For Board Members

Public officials must not engage in unethical or the appearance of unethical behavior. Board members should be cognizant of how their actions may be perceived by the public.

If you have questions about certain activities, you are encouraged to consult with the attorney from the Division of Board Services assigned to your Board.

### General Standards of Conduct For Board Members

- Board members must not act in an arbitrary or capricious manner in discharging any of their public duties. All Board member decisions whether the individual or collective ones must be based upon a reasoned consideration of facts applied to the correct law.

### Primary Duties of All Board Members

- Be knowledgeable about the statutes and rules governing the Board.
- Review and make decisions on all issues presented to the Board in compliance with the law and with the ultimate goal of protecting the public.
- Be aware that Board members are viewed as representatives of the Board when they appear at public meetings and professional gatherings. Board members should not speak for the Board unless specifically authorized to do so.
- Refer public inquiries about Board issues directly to the bureau director for your Board.
- Do not participate in discussion or vote on any matter in which the Board member has a personal or professional conflict of interest.
- Prepare for Board meetings by careful review of materials. Board members shall come to the meetings with preliminary opinions of the issues to be discussed and questions for clarification.
- As a professional member of the Board, remain current in standards of practice through reviewing professional literature and attending educational programming and through actual practice or relationships with colleagues in practice.
- As a public member of the Board, become educated regarding the practice of the profession.
- Maintain absolute confidentiality regarding disciplinary matters, examinations, examination scores and other closed-session issues. The failure to maintain confidentiality could result in loss of immunity Board members enjoy for purposes of their actions as Board members.

### Discipline

- The objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter others from engaging in similar conduct.
- Punishment of the licensee is not an appropriate consideration.
- The statutory framework which creates the Board's authority will provide the options available for discipline.
- The goal of a regulatory board is to protect the public.

## Standards of Ethical Conduct

### ■ The Five Commandments

- Do not act in an official capacity in a matter in which you have a private interest.
- Do not use your public position for a private benefit.
- Do not solicit or accept rewards or items or services likely to influence you.
- Do not use confidential information.
- Do not use your public position to obtain unlawful benefits.

### ■ Bias/ Conflict – Watch for:

- Financial Interests (employer/ employee/ competitor)
- Professional business Interests (have you worked with them in the past)
- Other – friends, non-friends
- Personal knowledge of facts which may not be in the record

# Agendas and Meetings

## Agendas and Meetings

- New Technologies – Share Point & Live Meeting.
- Agenda packets are mailed, emailed, and/or posted on Share Point about 7 calendar days prior to meeting.
- Agendas include:
  - Approval of the Agenda and Minutes
  - Open Session Items
    - Administrative Report
    - Legislation and Administrative Rules Issues
    - Public Hearings
    - Education and Exam Issues
    - Practice Questions
    - Current Issues Affecting the Profession
  - Closed Session items
    - Stipulations
    - Administrative Warnings
    - Deliberations on Proposed Disciplinary Actions
    - Case Closings
    - Monitoring Issues
    - Credentialing Issues
    - Exam Issues
- Agendas are published for public notice every Wednesday prior to the meeting on the Department's web site
- Meetings must comply with the Open Meetings Law.
- "To-Do" lists are distributed to staff within three (3) days after a meeting.
- Minutes are prepared within five (5) days after the board meeting.
  - Once the board approves the minutes, they are published on the Department's web site.

# Expenses and Travel

## General Expense Reimbursement Guidelines

- State statutes and Code of Ethics strictly prohibit any board member, his or her family, or co-workers from benefiting personally from free flight plans, lodging, meals, or other promotions which result from travel incurred in connection with board official business and paid from state or federal funds.
- All travel-related expenses are reimbursable within the limitations established by the Department of Employment Relations and the Department of Administration.
- Any board member whose appointment has been confirmed by the Senate or who has been nominated to fill a vacant board position is eligible to receive a per diem. Council and Committee members are not eligible for a per diem.
- Any board, council or committee member whose appointment has been confirmed by the Senate or who has been nominated to fill a vacant position is eligible to receive travel expenses for each day on which he or she has actually and necessarily engaged in the performance of board duties. If you are employed by the State of Wisconsin these requirements do not apply.
- All per diem and travel expense reimbursement vouchers must be submitted to the Department **within a month of the activity** in which payment is being requested.
- Any board member who wishes to attend out-of-state regional or national meetings or conventions must have prior approval by the Board and the Department, if he or she wishes to receive reimbursement for expenses by the Department.
- Employees in travel status are expected to use good judgment when incurring travel costs. Only expenses incurred while conducting official State business will be reimbursed. Reimbursement claims must represent actual, reasonable and necessary expenses.
- Reimbursement for air travel is limited to the lowest appropriate airfare which is defined as coach fare, which provides for not more than a 2-hour window from the traveler's preferred departure or arrival time and may require one plane transfer.
- Benefits from any airline promotion program, such as frequent flier points or credit vouchers, belong to the State and should be turned over to the Department.

## **Lodging Accommodations**

- Hotel arrangements for board meetings are scheduled by the department for all board meetings at the beginning of each year.
- Lodging the night before a board meeting will be reimbursed provided the board member would have to leave home before 6:00 a.m. in order to be at the meeting site by the set meeting time.
- Maximum reimbursement rate for in-state lodging is \$70, except in Milwaukee, Waukesha and Racine counties where the rate is \$80.
- Maximum reimbursement rates for out-of-state lodging are determined by the Office of State Employment Relations. In cases where a board member stays at the conference site, the conference room rate is allowable.

## Per Diem Guidelines

### **\$25 per day**

*(Only one per diem may be claimed per calendar day.)*

Examples:

- Attend board meeting or participate in a board meeting by telephone.
- Attend a Screening Panel Session when held on a day other than a board meeting date, in person or by telephone.
- Senate confirmation hearing.
- Exam administration or test development
- Attend a legislative or other public hearing as an authorized representative of the board on matters directly related to the work of the board. Prior approval from the secretary is required for per diem payments for more than one board-authorized representative at a public hearing.
- Represents the board at a meeting of a governmental body or other organization where attendance is necessary to the performance of the board's official duties.

### **5-Hour Rule**

- \$25 for performing a cumulative minimum of 5 hours engaged in:
  - Duties as a disciplinary case screener or board advisor including reviewing cases, consulting with investigators, etc. (NOTE: You will need to document the exact times performing these duties on your per diem form.
  - Preparation of board correspondence or articles
- Hours can only be claimed in the month the duties were performed. Hours cannot carry over to other months.

### **Insufficient Basis For Approval of a Per Diem**

- Travel days to or from board meetings, conferences, and other events when there is no event business conducted.
- Reading board agendas, meeting packets, minutes or transcripts.
- Attendance at professional association meetings, conferences, seminars, exam administrator or test development if there has not been prior board authorization and approval of the Secretary's office.

## Travel and Meal Guidelines

- **Mileage rate --** 48.5 cents per mile
- **Private Airplane--** 48.5 cents per mile
- **Meals** (*Maximum amounts*)

	<u>In-State Travel</u>	<u>Out-of-State Travel</u>
Breakfast	\$8	\$10
You must leave home before 6:00 a.m.		
Lunch	\$9	\$10
You must depart before 10:30 a.m. & return after 2:30 p.m.		
Dinner	\$17	\$20
You must return home after 7:00 p.m.		

*NOTE: Alcoholic beverages may not be claimed for any meal.*

- **Telephone:** One personal call home is reimbursable up to \$5 for each night in travel status.
- **Hotel Gratuities:** Gratuities to hotel employees are reimbursable up to \$2 on dates of departure and arrival, and up to \$2 per night for a stay at a hotel/motel.
- **Porterage:** Porterage costs at airports or bus terminals will be reimbursed. The claim should not exceed \$1 per piece of luggage.
- **Taxi/Shuttle:** Receipts are required for one-way fares exceeding \$25.

### Examples of Non-reimbursable Items

This list is not all-inclusive

- Traffic citations, parking tickets and other fines
- Mileage charges incurred for personal reasons, e.g., sightseeing, side trips, etc.
- Additional charges for late checkout
- Taxi fares to and from restaurants
- Meals included in the cost of registration fees or airfare
- Flight insurance
- Cancellation charges (unless fully justified)
- Alcoholic beverages
- Spouse or family members' travel costs
- Lost/stolen cash or personal property
- Personal items, e.g., toiletries, luggage, clothing, etc.
- Repairs, towing service, etc., for personal vehicle
- Pay-for-view movies in hotel room; personal entertainment
- Child care costs and kennel costs

# Forms and Memos

# Department of Regulation & Licensing

## PER DIEM REPORT

Month January Year 2011

**INSTRUCTIONS:** Send original (white) and first copy (yellow) to Bureau Director authorized to approve. Approving Bureau Director forwards original and first copy to Deputy Secretary, Department of Regulation and Licensing. Second copy (green) to be retained by claimant. Attach travel voucher if applicable.

NAME OF EXAMINING BOARD OR COUNCIL Board				BOARD OR COUNCIL MEMBER'S NAME John Doe			
Day	Specify Number of Hours	Purpose Code	Where Performed	Day	Specify Number of Hours	Purpose Code	Where Performed
1				17			
2				18			
3				19			
4				20			
5	7	A	DRL- Madison	21			
6				22			
7				23	2	G	Home
8				24			
9				25			
10				26			
11	3	B	Teleconference - Home	27			
12				28			
13				29			
14				30			
15				31			
16							

TOTAL DAYS CLAIMED 2 @ \$ 25.00 = \$50.00

<b>CLAIMANT'S CERTIFICATION</b> The undersigned certifies, in accordance with Sec. 16.53, Wis. Stats., that this account for per diem, amounting to \$25.00, is just and correct; and that this claim is for service necessarily incurred in the performance of duties required by the State, as authorized by law.	APPROVED:
	Bureau Director _____ Date _____
Claimant's Signature _____ Date _____	Secretary, Department of Regulation & Licensing
Social Security Number _____	Date _____

### Purpose Codes:

- A. Attend **Board meetings** in person or via teleconference call.
- B. Attend **Screening Panel** meetings on days other than board meeting days (teleconference calls)
- C. Attend **Hearings**, i.e., legislative, disciplinary or informal settlement conference hearings, on days other than board meeting days.
- D. Attend **Examinations**
- E. Attend **Test Development Sessions**, i.e., test review or analysis sessions, national testing sessions, tour of test facilities, etc.)
- F. Attend Senate Confirmation Hearings
- G. Review DOE cases
- H. Review credentialing applications other than at board meeting.
- G. Other (describe in detail)



## **Department Policy**

### **Deadline For Submitting Travel Vouchers and Per Diems**

Effective: Immediately

**Board Members will only be reimbursed for travel upon a motion made by the Board, Council, or Committee designating them as a representative and upon prior approval of the department.**

#### **Policy for Submitting Board Meeting Travel Reimbursement**

All travel vouchers and per diems must be submitted to the Department after each meeting and no later than the month following the Board meeting.

#### **Policy for Submitting Out-of-State Travel Reimbursement**

All travel vouchers and per diem vouchers must be submitted no later than the month following the month in which the out-of-state travel occurred.

#### **Forms Submitted after the Deadline**

Due to the Department's budget being an annual appropriation, those vouchers that are not submitted in a timely manner become at risk of not being reimbursed.

#### **Annual Appropriation:**

The Department receives authority from the legislature to spend a set amount of money each fiscal year. None of the authorized set amount can be carried forward to the next fiscal year.

**Division of Board Services**  
**HOTEL RESERVATIONS POLICY & PROCEDURE**

Effective January 1, 2010, the Department has selected the Fairfield Inn & Suites for all future hotel reservations.

**Fairfield Inn**  
**2702 Crossroads Dr**  
**Madison, WI 53718**  
**608-661-2700**

- If the board member is not going to use the reserved hotel room, it is the responsibility of the board member to cancel the room by calling the hotel themselves.
- If the hotel room is not cancelled, the board member may be responsible to pay the bill.
- If a meeting is cancelled due to a lack of quorum or no business, it is the responsibility of the Department to cancel any room reservations.

**QUORUM CONFIRMATION POLICY**

- It is every board member's responsibility to ensure there is a quorum to conduct business at all board meetings.
- It is the responsibility of each board member to inform the executive director of any meeting dates in which they will not be able to attend.
- If Division staff does not hear from a board member, they will assume that the board member will be attending the scheduled meeting.
- A quorum check will not be conducted prior to each scheduled board meeting.
- The only time Division staff will conduct a quorum check will be if two or more board members contact the Division indicating they will not be able to attend an upcoming scheduled meeting.
- Every board member will receive a list of all approved meeting dates at the first board meeting of the New Year. Please use this as a reference to assist in planning for the year ahead.

**INCLEMENT WEATHER POLICY & PROCEDURE**

**Quorum Note:** For open session you need one more than half of the total board membership. If there is formal discipline you will need 2/3 of the total board membership.

- Teleconference and Live Meeting options should be offered in order to continue with the scheduled meeting.
- Hotel rooms for the night before should be provided for any Board member traveling more than 50 miles from Madison and the meeting starts before 10:00 a.m.
- If a Board member who has a hotel reservation already in place will not attend and/or the meeting is cancelled, the hotel room should be cancelled immediately.



## **Division of Board Services Board Member Guidebook**

This Board Member Guidebook has been prepared for your information and understanding of the policies, expectations, and practices of the Department of Safety & Professional Services and the Division of Board Services. Please read it carefully. Upon completion of your review of this guidebook, sign the statement below, and return it to the Executive Director of your Board, Committee, or Council by the due date. A copy of this acknowledgment appears at the back of the guidebook for your records.

I, \_\_\_\_\_, have received and read a copy of the Division of Board Services Board Member Guidebook which outlines the policies, expectations, and practices of the Department of Safety & Professional Services and the Division of Board Services, as well as my responsibilities as a member of an attached Board, Council, or Committee.

I have familiarized myself with the contents of this guidebook. By my signature below, I acknowledge, understand, accept and agree to comply with the information contained in the Board Member Guidebook provided to me by the Division of Board Services. I understand this guidebook is not intended to cover every situation which may arise during my term, but is simply a general guide to the goals, policies, practices, and expectations of the Department of Safety & Professional Services.

\_\_\_\_\_  
(Member signature)

Please return by: \_\_\_\_\_  
(put date here)

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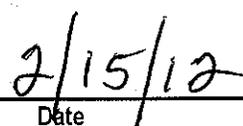
\_\_\_\_\_  
(Member signature)

Please return by: \_\_\_\_\_  
(put date here)

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**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

<b>1) Name and Title of Person Submitting the Request:</b>  Kris Anderson, DBS Paralegal		<b>2) Date When Request Submitted:</b>  February 15, 2012	
Items will be considered late if submitted after 4:30 p.m. and less than:			
<ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>			
<b>3) Name of Board, Committee, Council, Sections:</b> Cemetery Board			
<b>4) Meeting Date:</b> March 13, 2012	<b>5) Attachments:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>6) How should the item be titled on the agenda page?</b> Public Hearing on proposed rule-making CB 3-5	
<b>7) Place Item in:</b> <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	<b>8) Is an appearance before the Board being scheduled? If yes, who is appearing?</b>  <input type="checkbox"/> Yes by _____ (name)  <input checked="" type="checkbox"/> No	<b>9) Name of Case Advisor(s), if required:</b>	
<b>10) Describe the issue and action that should be addressed:</b> Board will hear public comment on rule-making proposal CB 3-5			
<b>11) Authorization</b> <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">                       Signature of person making this request                 </div> <div style="text-align: center;">                       Date                 </div> </div>			
Supervisor (if required)		Date	
Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
<b>Directions for including supporting documents:</b>			
1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES  
CEMETERY BOARD

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : WISCONSIN CEMETERY BOARD  
WISCONSIN CEMETERY BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 12- )

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An order of the Cemetery Board to rename and renumber chs. RL 52, 53, 54, 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.

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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 52-54. To reflect the transfer of authority effected by Act 174, the chapter and rule titles must be changed from "SPS" to "CB," and the chapter and rule numbers must be changed from those using 52-54 to those using 3-5.

The substance of the rules in chs. SPS 52-54, formerly RL 52-54, will not change by this proposal. These proposed rules amend those chapters only to reflect the transfer of regulatory authority, the 2011 department name-change, 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 former ch. RL 53 and proposed ch. CB 4, Wis. Admin. Code. 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 for care funds or preneed trust funds transactions. Sections SPS 53.03 (1) (d), (2) (d). The proposed rules would also 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 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 DPFR specifically address changes in 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 Administrative 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 and with or without cause, 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=](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](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](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](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=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=8130.6200&keyword_type=all&keyword=cemetery),  
[https://www.revisor.mn.gov/rules/?id=8130.6300&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](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 proposed 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 these 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, for such impact to have been fully absorbed by those entities as a part of routine operations.

**Anticipated costs incurred by private sector:**

The department finds that these proposed rules will have no significant fiscal effect on the private sector.

**Fiscal estimate:**

Implementation of these rules will cause a minor increase in the department's credentialing division costs, which the department is able to absorb.

**Effect on small business:**

These proposed rules will not have a significant economic impact on a substantial number of 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 phone at (608) 266-2112.

**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](mailto: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](mailto: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.

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TEXT OF RULE

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SECTION 1. Chapter RL 52 is renumbered Chapter CB 3.

SECTION 2. RL 52.01, as renumbered, is amended to read:

**~~RL 52.01~~CB 3.01 Authority.** This chapter is adopted pursuant to ss. 227.11, 440.905, and 440.92 (7), Stats.

SECTION 3. RL 52.02 (1) (Note), (3), 52.03, 52.04, 52.05, 52.06 (1) (intro.), (b), (2), (Note), as renumbered, are amended to read:

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

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

**~~RL 52.03~~CB 3.03 Approval of warehouses located in this state.** The ~~department~~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.

**RL 52.04CB 3.04 Approval of warehouses located outside this state.** The departmentboard 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 departmentboard.

(2) (a) The filing with the departmentboard 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 ~~regulation and licensingsafety 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 departmentboard, 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 departmentboard and the warehouse keeper shall submit a copy of each bond renewal certificate to the departmentboard.

**RL 52.05CB 3.05 Term of approval.** An approval of a warehouse by the departmentboard 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.

**RL 52.06CB 3.06 Cancellation of approval.** (1) Any approval previously granted by the departmentboard may be cancelled upon the occurrence of any of the following:

(b) The failure of a warehouse located outside this state to maintain the bond required under this chapter. When the departmentboard 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 departmentboard 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 departmentboard 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 ~~Bureau of Direct Licensing and Real Estate~~Division of

Professional Credential Processing, 1400 E. Washington Ave., P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 4. Chapter RL 53 is renamed and renumbered CB 4.

SECTION 5. Chapter RL 53 (table of contents) as renumbered, is amended to read:

~~RL 53.01~~ CB 4.01 Authority.

~~CB 4.015~~ Definition.

~~RL 53.02~~ CB 4.02 Change of trustee; applications.

~~RL 53.03~~ CB 4.03 Standards for approval.

~~RL 53.04~~ CB 4.04 Compliance with terms of approval.

~~RL 53.05~~ CB 4.05 Verification of deposit.

SECTION 6. RL 53.01, as renumbered, is amended to read:

~~RL 53.01~~ CB 4.01 **Authority.** This chapter is adopted pursuant to ss. 157.11, 157.19, 227.11, and 440.905, Stats.

SECTION 7. CB 4.015 is created to read:

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

SECTION 8. RL 53.02 (1), (2), (2) (Note), (3), (4), 53.03 (1) (intro.), as renumbered, are amended to read:

~~RL 53.02~~ 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 ~~department~~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 ~~department's~~office~~board~~.

**Note:** Forms may be obtained upon request from the Department of ~~Regulation and Licensing~~Safety and Professional Services, Bureau of Direct Licensing and Real Estate~~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 ~~department~~board.

(4) DETERMINATION OF APPROVAL. The ~~department 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.

SECTION 9. RL 53.03 (1) (intro.), (d), as renumbered, are amended to read:

~~RL 53.03~~ **CB 4.03 Standards for approval. (1) CARE FUNDS.** The ~~department 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:

(d) An affidavit from an officer or director of the financial institution ~~to~~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 never withdrawn.

SECTION 11. CB 4.03 (1) (dm) is created to read:

**CB 4.03 (1) (dm)** 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.

SECTION 10. RL 53.03 (2) (d), as renumbered, is amended to read:

**CB 4.03 (2) (d)** An affidavit from an officer or director of the financial institution ~~to~~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 never been withdrawn.

SECTION 12. CB 4.03 (2) (dm) is created to read:

**CB 4.03 (2) (dm)** An affidavit from an officer or director of the financial institution to whom the transfer is requested that its license is in good standing in this state.

SECTION 13. RL 53.04, 53.05, as renumbered, are amended to read:

~~RL 53.04~~ **CB 4.04 Compliance with terms of approval.** The ~~department 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.

~~RL 53.05~~ **CB 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 ~~department board~~ verifying the transfer, including the amount deposited, the date the deposit was made, and the account number of the fund.

SECTION 14. Chapter RL 54 is renamed and renumbered CB 5.

SECTION 15. RL 54.02, 54.03 (3), 54.05 (1), (2), as renumbered, are amended to read:

**RL 54.02 CB 5.02 Intent.** The intent of this chapter is to assure that cemetery authorities which are required to register with the departmentboard 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.

**RL 54.03 CB 5.03 (3)** "DepartmentBoard" means the ~~department of regulation and licensing~~ cemetery board.

**RL 54.05 CB 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 departmentboard which identifies the class and amount of each investment and certifies that each investment is in compliance with the criteria in s. ~~RL 53.04~~ CB 5.04.

(2) If the affidavit submitted to the departmentboard pursuant to sub. (1) lists investments in classes other than those described in s. ~~RL 54.04~~ 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. ~~RL 54.04~~ CB 5.04 (1) (a) to (d).

(3) If the investment proposal meets the criteria set forth in s. ~~RL 54.04~~ CB 5.04, the departmentboard may issue a letter of approval. A decision by the departmentboard not to approve an alternative investment may be appealed under ch. ~~RL~~ SPS 1.

(4) Affidavits are effective for one year and shall be filed with the departmentboard 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 departmentboard approval and the departmentboard may require divestiture of any alternative investment which does not meet the criteria in s. ~~RL 54.04~~ CB 5.04. The cemetery authority shall divest such alternative investments within 180 days following notification by the departmentboard that an alternative investment does not meet the criteria.

(6) After departmentboard 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 16. 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.

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(END OF TEXT OF RULE)  
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Dated \_\_\_\_\_

Agency \_\_\_\_\_

Chairperson  
Cemetery Board

CB 3, 4, 5 CR 11- (Board authority) PH draft

## ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original     Updated     Corrected

Administrative Rule Chapter, Title and Number

CB 3-5 "Authority transfer," includes all rules in the former chs. RL 52-54

Subject

Warehouses storing cemetery pre-need merchandise, changing trustees of care or pre-need trust funds, and alternative care funds investments.

Fund Sources Affected

GPR     FED     PRO     PRS     SEG SEG-S

Chapter 20, Stats. Appropriations Affected

20.165 (1) (g)

Fiscal Effect of Implementing the Rule

No Fiscal Effect  
 Indeterminate

Increase Existing Revenues  
 Decrease Existing Revenues

Increase Costs  
 Could Absorb Within Agency's Budget  
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy  
 Local Government Units

Specific Businesses/Sectors  
 Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes     No

Policy Problem Addressed by the Rule

2007 Wisconsin Act 174, amending chs. 157 and 440, Stats., effective on April 9, 2008, transferred authority previously held by the former department of regulation and licensing, now the department of safety and professional services, to the cemetery board. The authority transferred regards regulation of warehouses storing cemetery pre-need merchandise, changes in trustees of care or pre-need trust funds, and alternative care funds investments. The cemetery board's rule-making proposal will implement the authority transfer, which will bring the regulations into compliance with their enabling statutes.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

These proposed rules implement legislation that has been in effect for several years. If there was any economic or fiscal impact on private businesses or public entities based on the transfer of authority for regulating the relevant activities, which is highly unlikely, it has long since been absorbed by such businesses and entities as a part of routine operations. The rules promulgated by this proposal will therefore have no current economic or fiscal impact on any of those entities.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The existing administrative rules regarding regulation of warehouses storing cemetery pre-need merchandise, changes in trustees of care or pre-need trust funds, and alternative care funds investments reflect the pre-Act 174 enabling statutes. Because the authority for administering such regulation, currently set forth in chs. SPS 52-54, no longer rests with the department, they are not consistent with the statutes. Chapters SPS 52-54 must therefore be renamed and renumbered; there is no alternative to making the proposed changes.

Long Range Implications of Implementing the Rule

The primary implication of the proposed rules, whether short- or long-term, is that they will correctly indicate the cemetery board, and not the department, as the authority for regulating warehouses storing cemetery pre-need merchandise, changes in trustees of care or pre-need trust funds, and alternative care funds investments. Indicating the correct authority will result in less confusion for those governed by the rules, as well as for department personnel charged with carrying out cemetery board decisions based on thereon.

Compare With Approaches Being Used by Federal Government

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

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

**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 DFPR specifically address changes in 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 Funeral Merchandise and Funeral Merchandise 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 trusted 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 Administrative 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>

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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 institution that will serve as trustee for the portion of the fund allocated to it. 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 and with or without cause, 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=](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](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](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 for the depositor funeral provider and the purchaser are the named trustees. The purchaser may at any time prior 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](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=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=8130.6200&keyword_type=all&keyword=cemetery),

[https://www.revisor.mn.gov/rules/?id=8130.6300&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](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)

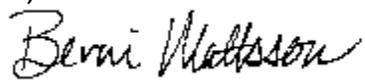
Name and Phone Number of Contact Person

Kris Anderson, (608) 261-2385

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**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

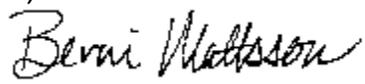
1) Name and Title of Person Submitting the Request:  <b>Berni Mattsson</b>		2) Date When Request Submitted:  <b>3/6/12</b>	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>	
3) Name of Board, Committee, Council, Sections: <b>Cemetery Board</b>			
4) Meeting Date: <b>3/13/12</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? <b>Review and Discuss public and legislative clearinghouse comments related to CB 3-5</b>	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing?  <input type="checkbox"/> Yes by _____ (name)  <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:  <b>Review and Discuss public and legislative clearinghouse comments related to CB 3-5. The clearinghouse comments are attached.</b>			
11) Authorization  <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">  </div> <div style="width: 35%; text-align: right;"> <b>3/6/12</b> </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Signature of person making this request</div> <div style="width: 35%; text-align: right;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Supervisor (if required)</div> <div style="width: 35%; text-align: right;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Bureau Director signature (indicates approval to add post agenda deadline item to agenda)</div> <div style="width: 35%; text-align: right;">Date</div> </div>			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Board Services Bureau Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

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**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  <b>Berni Mattsson</b>		2) Date When Request Submitted:  <b>2/7/12</b>	
		Items will be considered late if submitted after 4:30 p.m. and less than: ▪ 10 work days before the meeting for Medical Board ▪ 14 work days before the meeting for all others	
3) Name of Board, Committee, Council, Sections: <b>Cemetery Board</b>			
4) Meeting Date: <b>3/13/12</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? <b>Under informational items, 2011 AB 523</b>	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing?  <input type="checkbox"/> Yes by _____ (name)  <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:  <b>2011 AB 523 a proposal permitting a funeral establishment to be located in cemetery is provided to the Board for information.</b>			
11) Authorization  <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">  </div> <div style="width: 35%; text-align: right;"> <b>2/7/12</b> </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Signature of person making this request</div> <div style="width: 35%; text-align: right;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Supervisor (if required)</div> <div style="width: 35%; text-align: right;">Date</div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;">Bureau Director signature (indicates approval to add post agenda deadline item to agenda)</div> <div style="width: 35%; text-align: right;">Date</div> </div>			
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## 2011 ASSEMBLY BILL 523

February 3, 2012 – Introduced by Representatives WYNN, KLEEFISCH and KAPENGA.  
Referred to Committee on Consumer Protection and Personal Privacy.  
Referred to Joint Survey Committee on Tax Exemptions.

1     **AN ACT** *to repeal* 157.067 (title), 157.067 (2) and (2m) and 445.12 (6); *to*  
2     *renumber* 157.067 (1); *to renumber and amend* 157.635; *to amend* 70.11  
3     (13); and *to create* 157.066, 157.635 (2) and 445.12 (6m) of the statutes;  
4     **relating to:** permitting a funeral establishment to be located in cemetery,  
5     prohibiting discrimination against a funeral establishment that has no  
6     relationship with a cemetery, prohibiting discrimination against a cemetery  
7     that has not relationship with a funeral establishment, and eliminating a  
8     property tax exemption for cemetery authority property.

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### ***Analysis by the Legislative Reference Bureau***

Current law prohibits a licensed funeral director from operating a funeral establishment or mausoleum in a cemetery. Current law also prohibits a cemetery authority from permitting a funeral establishment to be located on cemetery property. With certain exceptions, current law prohibits a cemetery authority from receiving or accepting any commission, fee, remuneration, or benefit of any kind from a funeral establishment or from an owner, employee, or agent of a funeral establishment. This bill eliminates each of these prohibitions.

Current law permits the cemetery authority of a cemetery that is affiliated with a religious society to adopt regulations that prohibit the burial in the cemetery of

**ASSEMBLY BILL 523**

human remains of an individual who is not in the class of individuals identified by the religious society for burial in the cemetery. This bill retains the right of a religiously affiliated cemetery authority to adopt such regulations. However, under the bill, a religiously affiliated cemetery authority may not adopt regulations that prohibit the human remains of an individual from being buried at the cemetery authority's cemetery because funeral services for the individual were conducted at a funeral establishment other than a funeral establishment that has a financial relationship with the cemetery authority's cemetery. Also, the religiously affiliated cemetery authority may not adopt regulations that prohibit the human remains of an individual from being buried at the cemetery authority's cemetery because the human remains were prepared for burial or transportation at a funeral establishment other than a funeral establishment that has a financial relationship with the cemetery authority's cemetery.

Under the bill, if a cemetery authority erects, owns, operates, or has a financial interest in a funeral establishment, that cemetery authority may not prohibit the burial at the cemetery authority's cemetery of a deceased person whose human remains were prepared for burial or whose funeral services were conducted at a funeral establishment that has no relationship with the cemetery authority. Finally, a funeral establishment that has an ownership or other financial relationship with a cemetery authority may not require the human remains of a decedent to be buried in the cemetery authority's cemetery as a condition of those human remains being cared for or prepared for transportation or burial at that funeral establishment.

Under current law, land owned by a cemetery authority that is used exclusively as public burial grounds, tombs, and monuments is exempt from the property tax. In addition, personal property owned by the cemetery authority that is necessary for the care and management of burial grounds and sites is exempt from the property tax. Under the bill, land physically occupied by a funeral establishment, if the land is located in a cemetery, is subject to the property tax.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 70.11 (13) of the statutes is amended to read:
- 2           70.11 **(13)** CEMETERIES. Land owned by cemetery authorities, as defined in s.
- 3 157.061 (2), and used exclusively as public burial grounds and tombs and
- 4 monuments therein, and privately owned burial lots; land adjoining such burial

**ASSEMBLY BILL 523**

1 grounds, owned and occupied exclusively by the cemetery authority for cemetery  
2 purposes; personal property owned by any cemetery authority and necessary for the  
3 care and management of burial grounds; burial sites and contiguous lands which are  
4 cataloged under s. 157.70 (2) (a). This subsection does not apply to land physically  
5 occupied by a funeral establishment, if the land is located in a cemetery.

6 **SECTION 2.** 157.066 of the statutes is created to read:

7 **157.066 Discrimination against funeral establishments prohibited.**

8 **(2)** No cemetery authority that has erected a funeral establishment or that  
9 maintains any ownership, operation, or other financial interest in a funeral  
10 establishment may prohibit the burial of a decedent's human remains in the  
11 cemetery authority's cemetery because the caring or preparing for burial or  
12 transportation of the human remains or the funeral services conducted for the  
13 decedent occurred at a funeral establishment other than the funeral establishment  
14 erected, maintained, owned, operated, or financially connected to the cemetery  
15 authority's cemetery.

16 **SECTION 3.** 157.067 (title) of the statutes is repealed.

17 **SECTION 4.** 157.067 (1) of the statutes is renumbered 157.066 (1).

18 **SECTION 5.** 157.067 (2) and (2m) of the statutes are repealed.

19 **SECTION 6.** 157.635 of the statutes is renumbered 157.635 (1) and amended to  
20 read:

21 157.635 **(1)** ~~Nothing~~ Subject to sub. (2), nothing in this subchapter prohibits  
22 a cemetery authority of a cemetery that is affiliated with a religious society organized  
23 under ch. 187 from prohibiting the burial of the human remains of an individual in  
24 the cemetery if the individual was in a class of individuals who are prohibited under

**ASSEMBLY BILL 523**

1 regulations adopted by the cemetery authority or religious society from being buried  
2 in the cemetery.

3 **SECTION 7.** 157.635 (2) of the statutes is created to read:

4 157.635 (2) A cemetery authority described in sub. (1) may not adopt a  
5 regulation that prohibits the human remains of an individual from being buried in  
6 the cemetery on the basis of any of the following:

7 (a) That funeral services for the deceased individual were conducted at a  
8 funeral establishment other than a funeral establishment erected, maintained,  
9 owned, operated, or financially connected to the cemetery authority's cemetery.

10 (b) That the human remains of the deceased individual were cared for or  
11 prepared for burial or transportation at a funeral establishment other than a funeral  
12 establishment erected, maintained, owned, operated, or financially connected to the  
13 cemetery authority's cemetery.

14 **SECTION 8.** 445.12 (6) of the statutes is repealed.

15 **SECTION 9.** 445.12 (6m) of the statutes is created to read:

16 445.12 (6m) No licensed funeral director or operator of a funeral establishment  
17 that is erected, owned, or operated by a cemetery authority or a financial interest of  
18 which is held by a cemetery authority may require the human remains of a decedent  
19 to be buried in the cemetery authority's cemetery as a condition of caring or preparing  
20 for burial or transportation of the decedent or as a condition of conducting funeral  
21 services for the decedent.

22 **SECTION 10. Initial applicability.**

23 (1) The treatment of section 70.11 (13) of the statutes first applies to the  
24 property tax assessments as of January 1, 2012.

25 (END)

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**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

1) Name and Title of Person Submitting the Request:  <b>Berni Mattsson</b>		2) Date When Request Submitted:  <b>2/29/12</b>	
		Items will be considered late if submitted after 4:30 p.m. and less than: <ul style="list-style-type: none"> <li>▪ 10 work days before the meeting for Medical Board</li> <li>▪ 14 work days before the meeting for all others</li> </ul>	
3) Name of Board, Committee, Council, Sections: <b>Cemetery Board</b>			
4) Meeting Date: <b>3/13/12</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? <b>Under informational items, 2011 AB 547/SB453</b>	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing?  <input type="checkbox"/> Yes by _____ (name)  <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:  <p>The following is provided for the Board's information.</p> <p>As amended AB 547/SB453 would delete s. 440.91 (8), Stats. under section 164M of the bill</p> <p>The current statute reads: 440.91 (8) Sections <a href="#">452.13</a>, <a href="#">452.14</a>, <a href="#">452.15</a>, <a href="#">452.18</a>, <a href="#">452.21</a> and <a href="#">452.22</a>, as they apply to real estate salespersons, apply with equal effect to cemetery salespersons.</p> <p><b>History:</b>          Until 1991, Wisconsin cemetery authorities and cemetery salespersons were regulated by the Real Estate Examining Board at the Department of Regulation and Licensing. Also, at one time, each cemetery authority in the state of Wisconsin was required to have a licensed real estate broker on staff (which is no longer the case). As such, the Real Estate Examining Board had a tendency to impose regulations created for real estate professionals on cemetery salespersons. They took this broad approach to avoid creating two sets of regulations – one for real estate agents and brokers and another one for cemetery salespersons.</p> <p><b>Rationale:</b>          Imposing regulations created for real estate agents and brokers is outdated and unnecessary:</p> <ul style="list-style-type: none"> <li>• The real estate industry and cemetery industry are two very distinct industries with very little in common.</li> <li>• Cemetery authorities and salespeople are no longer regulated by the Real Estate Examining Board.</li> <li>• Cemetery authorities and salespeople are now regulated by their own separate Board (the WI Cemetery Board at DSPS), which has rule-writing authority and the ability to discipline licensed professionals for misconduct.</li> <li>• Wisconsin's current cemetery laws (chp. 157 and 440) are effective – and provide sufficient consumer protection and oversight of the industry – without ss. 440.91(8). In other words, the section is outdated an unnecessary.</li> </ul>			

Empty box for content.

11)

Authorization

*Berni Mattsson*

2/29/12

Signature of person making this request

Date

Supervisor (if required)

Date

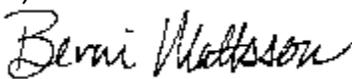
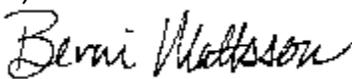
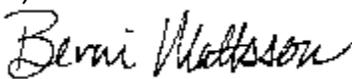
Bureau Director signature (indicates approval to add post agenda deadline item to agenda) Date

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**State of Wisconsin  
Department of Safety & Professional Services**

**AGENDA REQUEST FORM**

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3) Name of Board, Committee, Council, Sections: <b>Cemetery Board</b>													
4) Meeting Date: <b>March 13, 2012</b>	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? <b>Informational Item - Conversion of Documents to Electronic Format</b>											
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? If yes, who is appearing?  <input type="checkbox"/> Yes by _____ (name)  <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:											
10) Describe the issue and action that should be addressed: The following letter and information are provided for the Board.  At present, the board's council sees no legal basis for requiring records be kept in any particular form, only that they must be created and maintained. As a practical matter, she would advise the electronic records be routinely and frequently backed up to insure that records are maintained as required by law, and particularly in the event of a natural disaster and the like. She will draft a response to that effect.													
11) Authorization  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; border-bottom: 1px solid black;">  </td> <td style="width: 40%; border-bottom: 1px solid black; text-align: right;">           2-16-12         </td> </tr> <tr> <td style="border-bottom: 1px solid black;">           Signature of person making this request         </td> <td style="border-bottom: 1px solid black; text-align: right;">           Date         </td> </tr> <tr> <td style="border-bottom: 1px solid black;">           Supervisor (if required)         </td> <td style="border-bottom: 1px solid black; text-align: right;">           Date         </td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">           Bureau Director signature (indicates approval to add post agenda deadline item to agenda)         </td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">           Date         </td> </tr> </table>					2-16-12	Signature of person making this request	Date	Supervisor (if required)	Date	Bureau Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
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February 15, 2012

Wisconsin Cemetery Board

**Re: Conversion of Documents to Electronic Format**

Dear Board:

I serve as the compliance officer for Stewart Enterprises, Inc. ("STEI" or the "company") in connection with its operation of various cemeteries in Wisconsin as well as many other states. STEI, which is headquartered in New Orleans, LA, suffered the loss of many paper documents in the wake of hurricane Katrina. Since then, the company has been re-evaluating its records management system and making plans to convert its paper records to electronic format. In light of the passage of the Uniform Electronic Transactions Act (UETA) in most states in which it does business, including Wisconsin, and the costs and risks associated with storage of paper records, the conversion to a paperless, electronic record keeping system has become even more appealing and plausible. Nevertheless, before the company implements a program to convert cemetery, crematory and funeral records to a paperless, electronic format, it is seeking approval from State regulatory authorities. The State of Florida approved of the company's conversion to electronic files in 2009. The purpose of this letter is to request the same of your office.

STEI intends to scan all paper files and maintain them in a secure electronic format using Laserfiche® software, a program utilized by many state and federal agencies. In the event of an audit or inspection by regulatory authorities, requested files may easily be retrieved electronically at a cemetery, crematory or funeral home location and printed for the regulatory examiner. Unless there is a specific retention period for the paper documents, the plan is to destroy the paper records once imaging is complete.

I am unaware of any Wisconsin law that prohibits our cemeteries from transitioning to a paperless record keeping system. In fact, it appears that such a system is acceptable, if not encouraged, under the Uniform Electronic Transactions Act.

In response to this letter, we would appreciate written confirmation from your office acknowledging the acceptability of the maintenance of cemetery records in electronic format and advising of any requirements additional to those set forth in the Uniform Electronic Transactions Act for ensuring the records' integrity, security, accessibility or other attribute.

Thank you in advance for your assistance in this matter. Should you have any questions or concerns or require any additional information, please do not hesitate to contact me.

Very truly yours,

Amy Battagler  
Stewart Enterprises, Inc.  
Phone: 816-719-0253  
Email: abattagler@stei.com