

Chapter SPS 54

APPROVAL OF ALTERNATIVE CARE FUND INVESTMENTS

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Note: Chapter RL 54 as it existed on April 30, 1994 was repealed and a new chapter RL 54 was created effective May 1, 1994. **Chapter RL 54 was renumbered chapter SPS 54 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.**

SPS 54.01 Authority. This chapter is adopted pursuant to ss. 157.11 (9g) (a) 1. c. and 227.11 (2), Stats.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

SPS 54.02 Intent. The intent of this chapter is to assure that cemetery authorities which are required to register with the department 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.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94.

SPS 54.03 Definitions. As used in this chapter:

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

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

(3) "Department" means the department of safety and professional services.

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; **correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671.**

SPS 54.04 Criteria. (1) A cemetery authority shall give due consideration to both long term and short term cash flow needs in selecting alternative investments. The following classes of alternative investments are permissible:

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

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

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

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

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

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

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

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

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (1) (b), (3) and (4), Register, July, 1997, No. 499, eff. 8-1-97.

SPS 54.05 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 department which identifies the class and amount of each investment and certifies that each investment is in compliance with the criteria in s. SPS 54.04.

(2) If the affidavit submitted to the department pursuant to sub. (1) lists investments in classes other than those described in s. SPS 54.04 (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. SPS 54.04 (1) (a) to (d).

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

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

(6) After department 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. SPS 54.04 (1) (a) to (d), (3) and (4).

History: Cr. Register, April, 1994, No. 460, eff. 5-1-94; am. (2) and (3), Register, July, 1997, No. 499, eff. 8-1-97; **correction in (1), (2), (3), (5), (6) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**