

**2001 DRAFTING REQUEST**

**Senate Amendment (SA-SSA1-SB55)**

Received: **07/10/2001**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Renner**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Addl. Drafters:

Subject: **Cemetery - regulation**

Extra Copies:

Submit via email: **NO**

Requester's email:

**Pre Topic:**

LFB:.....Renner -

**Topic:**

Regulation of cemeteries

**Instructions:**

See Attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kunkemd 07/16/2001			_____			
/1		csicilia 07/17/2001	rschluet 07/17/2001	_____	lrb_docadmin 07/17/2001		
/2	kunkemd 07/19/2001	csicilia 07/19/2001	rschluet 07/20/2001	_____	lrb_docadmin 07/20/2001		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketcd</u>	<u>Required</u>
/3	kunkemd 07/23/2001	csicilia 07/23/2001	haugca 07/23/2001	_____	lrb_docadmin 07/24/2001		

FE Sent For:

<END>

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*Handwritten notes:*  
 Under /2: csicilia 7-23, rschluet 7-23, lrb\_docadmin 7-23

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7-17-1							

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# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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July 9, 2001

## MEMORANDUM

**To:** Tony Mason and Darin Renner, Legislative Fiscal Bureau

**From:** Mark Kunkel

**Subject:** Cemetery Proposal

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Is it possible to clarify the Conference Committee's intent regarding the Senate's cemetery proposal? The Committee adopted the proposal, but with the modification that it apply only to cemeteries in counties with a population of 600,000 or greater (i.e., Milwaukee County).

The proposal allows for the appointment of trustees to operate cemeteries that are neglected or abandoned. A trustee's expenses are paid from a cemetery management insurance fund, that consists of a \$10 filing fee for death certificates and a \$1 surcharge on death certificates. I understand that the Committee intends for these provisions to apply only in Milwaukee County. However, the proposal makes a number of other changes to the regulation of cemeteries, including the changes noted below. Should all of the following changes apply only to Milwaukee County?

**1. Cemetery authorities, cemetery salesperson, and preneed sellers.** The proposal creates a cemetery board to investigate and take disciplinary action against cemetery authorities, cemetery salespersons, and preneed sellers. Under current law, the Department of Regulation and Licensing (DRL) has such authority. Does the Committee intend to create a dual regulatory scheme under which DRL continues to have authority outside Milwaukee County and the board has authority inside the county? Also, the proposal creates licensing requirements that are different than the registration requirements under current law. Should the new licensing requirements apply only in Milwaukee County, and the registration requirements remain in effect outside Milwaukee County? In addition, the proposal requires DRL to promulgate rules establishing a code of ethics for cemetery authorities, cemetery salespersons, and preneed sellers. Should the rules apply only in Milwaukee County?

**2. Reporting and record-keeping requirements.** The proposal makes several changes to the reporting and record-keeping requirements that apply to cemetery authorities, including creating a requirement that cemetery authorities maintain records regarding the location of burial spaces. Should the new requirements apply only in Milwaukee County?

**3. Care funds and preneed trust funds.** The proposal makes a number of changes to the requirements that apply to care funds for cemetery lots and trust funds that are paid to preneed sellers under preneed sales contracts. Should these changes apply only in Milwaukee County?

4. ***Ownership and control changes.*** The proposal requires DRL approval before a cemetery authority can take certain actions regarding changes in ownership or control. Also, the proposal allows DRL to apply for an injunction to prevent a person from acquiring ownership if the person has previously abandoned a cemetery. Should these changes apply only in Milwaukee County?

5. ***Identification of human remains.*** The proposal requires a person who provides human remains to a cemetery for burial to identify the decedent on the exterior of the container or casket. Should this requirement only apply to burials in Milwaukee County?

6. ***Municipal ordinances.*** The proposal allows a city, village, or town to enact and enforce an ordinance that allows a person to bury human remains in a burial space that is not located in a cemetery. Should this provision apply only to cities, villages, and towns in Milwaukee County?

7. ***Burial space interests.*** The proposal requires DRL to promulgate rules interpreting the requirements under current law regarding interests in burial spaces. In addition, DRL must promulgate rules that require a person who transfers an interest in a burial space to provide the transferee with a written notice, prepared by DRL, that describes those requirements. Should the rules apply only to burial spaces in Milwaukee County?

8. ***Purchase agreements.*** The proposal imposes certain requirements on agreements for purchasing burial spaces from cemetery authorities. Should these requirements apply only to burial spaces in Milwaukee County?

9. ***Duty to maintain cemetery.*** The proposal requires a cemetery authority to maintain a cemetery in a reasonable manner at all times. Should this requirement apply only in Milwaukee County?

10. ***Reburial penalty.*** The proposal increases the penalty for violating requirements regarding the reburial of human remains to a fine of no more than \$1,000, imprisonment for no more than 90 days, or both. Under current law, the penalty is a forfeiture of no more than \$200. Should the new penalty only apply to violations in Milwaukee County?

11. ***Terminology changes.*** The proposal replaces certain references to "cemetery lots" with references to "burial spaces". Should these changes only apply in Milwaukee County?

12. ***Cemetery merchandise warehouses.*** The proposal requires DRL to promulgate rules for the approval of cemetery merchandise warehouses located in and outside the state. (Under current law, authority to approve in-state warehouses rests primarily with DATCP.) This requirement cannot logically apply only to Milwaukee County. Therefore, should it be eliminated from the proposal?



# Memorandum

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**To:** Drafting file  
**From:** Mark Kunkel  
**Date:** 07/13/01  
**Re:** Clarification of drafting instructions for cemetery proposal

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Tony Mason met with the members of the Conference Committee who dealt with cemetery issues, and provided me with the following instructions about the items in my memo dated July 9:

*Item 1.* Do not create a new board. Do not create a dual licensing scheme. Do not require DRL to promulgate rules regarding a code of ethics. Based on this instruction, I will eliminate the changes described in this item.

*Items 2, 3, 4, and 5.* The changes should apply only in Milwaukee County.

*Items 6, 7, and 8.* Eliminate these changes.

*Items 9 and 10.* These changes should apply only in Milwaukee County.

*Item 11.* These changes should apply throughout the state.

*Item 12.* Eliminate this change.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBb2049/1dn

MDK:f:....

gjs

40 of this drafter's note

Darin Renner and Tony Mason:

Please review this amendment to make sure that it is consistent with the Conference Committee's intent. The differences between the Senate's proposal and this amendment are as follows:

1. The amendment eliminates the cemetery board. References to the board's powers and duties under proposed s. 157.117 are changed to refer to DRL.

2. The amendment modifies the language regarding the fees for death certificates so that it applies only in Milwaukee County and conforms to other changes made in the budget. See proposed s. 69.22 (7). On a related point, the trustee and fund provisions only apply to cemeteries in Milwaukee County. See the revised definition of "cemetery" in proposed s. 157.117 (1) (a).

3. Except as noted in the following item, the amendment restores current law regarding the registration of cemetery authorities, cemetery salespersons, and preneed sellers. I made this change because, based on the Conference Committee's elimination of the board, it appears that the Committee does not want to create a dual credentialing scheme inside and outside Milwaukee County. Alternatively, you could impose the new licensure requirements throughout the entire state, instead of restoring current law on registration throughout the entire state. However, I wasn't sure whether that alternative would be consistent with the Conference Committee's intent.

4. The amendment restores the exemptions from registration under ss. 440.91 (6m) (cemetery authorities) and (7) (cemetery salespersons) and 440.92 (10) (preneed sellers), except that it modifies these exemptions so that, with respect to nonreligious cemeteries, they do not apply inside Milwaukee County. (Religious cemeteries are exempt regardless of whether they are inside or outside Milwaukee County.) Is that okay?

5. The amendment eliminates the provisions regarding municipal ordinances for burials outside of cemeteries.

6. The amendment restores the exemption from cemetery association filing requirements that applies to nonprofits. However, the amendment modifies the

exemption so that it does not apply to nonprofits in Milwaukee County. See the proposed amendment of s. 157.062 (9). ✓

7. The amendment restores the exemption from the requirement for cemeteries to notify and obtain DRL approval about sales of cemetery land, but modifies the exemption so that it does not apply in Milwaukee County. See the proposed amendment of s. 157.08 (5). ✓ In addition, the amendment requires only cemeteries located in Milwaukee County to make notifications and obtain approvals for other actions. See proposed s. 157.08 (2) (b) 1m. Also, I wasn't sure what to do about DRL's rule-making authority on these matters, so I kept it in the amendment. See proposed s. 157.08 (2) (b) 2. and 4. ✓

8. The amendment restores s. 157.10, stats., to current law, but maintains the requirement added by the Senate that DRL must promulgate rules interpreting the requirements of s. 157.10, stats., and requiring a written notice regarding the requirements. I wasn't sure whether the written notice should only apply to transfers in Milwaukee County, so I retained its application throughout the state. On a related point, except for terminology changes, the amendment restores s. 157.635, stats. ~~to current law~~ <sup>no</sup> The changes described in this item accomplish the Assembly's position discussed under "Conveyance of Cemetery Plots" in the LFB comparative summary. (However, note that the Assembly's position does not address the rule-making and written notice requirements discussed above.)

does not affect

9. The duty to maintain a cemetery applies only in Milwaukee County. See proposed s. 157.11 (1m). ✓

10. The changes regarding gifts apply only to cemeteries in Milwaukee County. See proposed s. 157.11 (9) (c). ✓

that are not

11. The changes regarding investment of care funds apply only to cemeteries in Milwaukee County. See the proposed amendment of s. 157.11 (9g) (a) 1. c. and 2. Also, the amendment restores the exemption for nonprofits, but modifies it so that it applies only to nonprofits in Milwaukee County. See the proposed amendment of s. 157.11 (11).

12. With respect to abandonment of cemeteries, the current law provisions in s. 157.115 (1) (a) (which the Senate did not affect) apply to cemeteries in all counties. The current law provisions in s. 157.115 (1) (b) and (c) (which are renumbered s. 157.115 (1g) (b) and (c)) apply outside Milwaukee County. The changes that the Senate made to s. 157.115 (1) (b) and (c) ~~and the Senate's creation of s. 157.115 (1) (d)~~ <sup>apply only in Milwaukee County</sup> See proposed s. 157.115 (1r). ✓

apply only in Milwaukee County

STET

13. The changes regarding care funds for mausoleums apply only in Milwaukee county. See the proposed amendment of s. 157.12 (3) (b). ✓

STET

14. The amendment restores the exemption from the prohibition regarding minimum acreage, but modifies it so that it does not apply to cemeteries in Milwaukee County. See the proposed amendment of s. 157.128 (3) (b). ✓

15. The amendment restores the exemption from care fund requirements for nonprofits, but modifies it so that it does not apply to cemeteries in Milwaukee County. ✓

The Senate's proposed s. 157.115 (1) (d) is revised to prevent ownership of a cemetery in Milwaukee County if a person abandoned a cemetery anywhere in the state. See proposed s. 157.115 (1r).

See the proposed amendment of s. 157.19 (5) (a). In addition, DRL's authority to require a cemetery authority to use a specified financial institution applies only in Milwaukee County. See proposed s. 157.19 (5) (c).

16. The requirements regarding identification of human remains apply only in Milwaukee County. See proposed s. 157.61.

17. The reporting and record-keeping requirements for cemeteries have been restored to current law and the new requirements regarding sale and location of burial spaces apply only in Milwaukee County. See proposed s. 157.62 (2) (b) 1m. and (3) (c). Also, DRL's new enforcement authority applies only to cemeteries in Milwaukee County. See proposed s. 157.62 (4) (b) and (6) (a) and (b). However, the amendment allows DRL to promulgate rules applicable to all cemeteries. See proposed s. 157.62 (5) (a). If you limit this rule-making authority only to cemeteries in Milwaukee County, you could argue that DRL is thereby prohibited from promulgating rules for cemeteries outside Milwaukee County. I'm not sure, but I don't think that result is intended.

18. On a point related to the above item, the amendment restores the exemptions from reporting in s. 157.625, except that it modifies them so they don't apply to cemeteries in Milwaukee County.

19. The increased penalty for violating reburial requirements applies only in Milwaukee County. See proposed s. 157.64 (2) (h).

20. The changes to preneed trust fund deposits apply only in Milwaukee County. See proposed s. 440.92 (3) (am).

21. The amendment restores current law on approval of cemetery merchandise warehouses.

22. The amendment eliminates the Senate's requirements regarding burial space purchase agreements. (The Senate's requirements were included in proposed s. 440.928, which is deleted from the amendment.)

23. The amendment retains the Senate's creation of authority for DRL to assess a forfeiture of no more than \$5,000, in lieu of, or in addition to, taking other disciplinary action. See proposed s. 440.93 (1m). Under the amendment, this authority applies inside and outside Milwaukee County. It would be rather cumbersome to try to limit this authority to Milwaukee County. Is that okay?

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