

Report From Agency

**STATE OF WISCONSIN
CEMETERY BOARD**

IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CLEARINGHOUSE RULE 17-050
FUNERAL DIRECTORS EXAMINING BOARD:

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

This rule updates requirements for cemetery authorities and the construction of mausoleums and public mausoleums. This rule also modifies cemetery records according to 2015 Wisconsin Act 237.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Board held a public hearing on September 28, 2017. The Board did not receive any written or verbal comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment: The Clearinghouse made a comment seeking more precise statutory citations or additions in the statutory authority and interpretation sections.

Response: Citations were added or modified.

Comment: The Clearinghouse made general suggestions regarding style, grammar, and formatting throughout the draft.

Response: All Clearinghouse comments regarding style, grammar, and formatting have been accepted.

Comment: The Clearinghouse made a comment regarding providing additional detail in the summary of factual data and analytical methodologies section.

Response: Additional detail was added.

Comment: The Clearinghouse made a suggestion to update the fiscal summary and economic analysis section.

Response: The information in this section was updated.

Comment: The Clearinghouse noted that a date should be provided to submit comments on the rule.

Response: The date was added.

Comment: The Clearinghouse suggested revising the definition of “Board” to include all chapters of the cemetery rules.

Response: The definition was revised to pertain to all chapters.

Comment: The Clearinghouse noted that a correction was needed to the treatment clause of the section renumbered CB 1.015.

Response: The correction was made.

Comment: The Clearinghouse recommended moving the definition of a mausoleum from ch. CB 1 to ch. CB 6.

Response: The definition was moved.

Comment: The Clearinghouse suggested adding a separate statutory authority at the beginning of ch. CB 6.

Response: The statutory authority was added to ch. CB 6.

Comment: The Clearinghouse sought clarification regarding how the Board would use s. SPS 361.30. The Clearinghouse pointed out that s. SPS 361.30 does not provide the Board with any authority and asked if the Board plans on using this section of the code as their review standard. The Clearinghouse also pointed out an incorrect statutory citation.

Response: This section of the rule was revised to clarify that s. SPS 361.30 is the standard the Board, or the Board’s designee, will use to review mausoleum construction plans. Additionally, the statutory citation was corrected.

Comment: The Clearinghouse suggested that mausoleum plan review was redundantly noted in ss. CB 6.01 and 6.02.

Response: The plan review and construction review language was consolidated and clarified.

Comment: The Clearinghouse suggested that the citation of the International Building Code was improper.

Response: The citation reference was deleted.

Comment: The Clearinghouse suggested adding an initial applicability provision regarding mausoleum construction or conversion.

Response: The initial applicability was added as s. CB 6.13.

Comment: The Clearinghouse suggested adding the statutory citation of s. 157.62 (5), Stats., in s. CB 2.01.

Response: The citation was added.

Comment: The Clearinghouse inquired about the intent of the phrase, “In addition to board construction requirements” in s. CB 6.03.

Response: This phrase was deleted.

Comment: The Clearinghouse suggested providing a definition for “cemetery authority”.

Response: A definition for this term was added.

Comment: The Clearinghouse suggested adding a note indicating that the burial records in this chapter are different than that listed in statutes.

Response: A note was added indicating a distinction between administrative code burial record requirements and record requirements in statutes.

Comment: The Clearinghouse suggested adding a specific length of time to retain burial records.

Response: No change was made because the draft correctly omitted a length of time as these records are to be held in perpetuity.

Comment: The Clearinghouse was unclear how the Board would approve the construction plans for mausoleums and what the roles of DSPS and the Board are relating to the review process.

Response: The draft was revised to clarify that the Board is adopting the Wisconsin Commercial Building Code contained in chs. SPS 361 to 366 as the standard used for the review and construction of mausoleums and public mausoleums. The Board indicated they are likely to designate DSPS as the entity that will review and inspect the construction of mausoleums and public mausoleums on behalf of the Board with the Wisconsin Commercial Building Code as the standard used.

Comment: The Clearinghouse suggested revising the draft to specify how the requirements of the Wisconsin Commercial Building Code apply to non-public mausoleums.

Response: The Board rejected this suggestion citing s. 157.12 (2) (a), Stats., as the basis for the application of the Board’s adoption of the Wisconsin Commercial Building Code regarding mausoleums.

Comment: The Clearinghouse noted overlapping language in two areas of the draft regarding mausoleum construction.

Response: The revised draft removed redundancies.

Comment: The Clearinghouse appeared unclear how the Board would approve the construction material used for mausoleums and what the roles of DSPS and the Board are relating to the material review process.

Response: The draft was revised to clarify that the Board is adopting the Wisconsin Commercial Building Code contained in chs. SPS 361 to 366 as the standard for the

material used in the construction of mausoleums and public mausoleums. The Board indicated they are likely to designate DSPPS as the entity that reviews the construction material of mausoleums and public mausoleums on behalf of the Board using the Wisconsin Building Code as the applied standard.

Comment: The Clearinghouse suggested defining the term “cemetery authority”.

Response: Definition was added.

Comment: The Clearinghouse suggested clarifying how the sale of a public mausoleum space relates to mausoleum inspections.

Response: This section was clarified to point out that under statute, and now in the revised draft, public mausoleum space is prohibited from being offered for sale until final mausoleum construction inspection approval is obtained.

Comment: The Clearinghouse suggested a more complete explanation of the exception provided in s. 157.12 (2) (b) Stats.

Response: The draft was revised to clarify that minor cosmetic public mausoleum construction defects were not subject to the prohibition from offering public mausoleum space for sale.

Comment: The Clearinghouse sought clarification regarding the mausoleum construction inspection and inspection notification process.

Response: Clarification was added to the draft stating that the Wisconsin Commercial Building Code, contained in chs. SPS 361 to 366, was being adopted as the construction standard. The building code contained in chs. SPS 361 to 366 articulates the framework of the entire inspection and notification process. Additionally, the Board has indicated that they are likely to designate DSPPS as the entity that will provide oversight and inspections of public mausoleum construction as is current practice.

Comment: The Clearinghouse sought clarification regarding the Board’s intent with respect to construction violations.

Response: Clarification was added to the draft stating the Wisconsin Commercial Building Code, contained in chs. SPS 361 to 366, was being adopted as the construction and inspection standard. The building code contained in chs. SPS 361 to 366 articulates the framework of the entire construction inspection, violation, and notification process. Additionally, the Board has indicated that they are likely to designate DSPPS as the entity that will provide oversight and inspections of public mausoleum construction as is current practice.

Comment: The Clearinghouse sought clarification regarding the Board’s intent to issue certifications and temporary certifications with respect to construction violations and whether this applies to all mausoleums or just public mausoleums.

Response: Section 157.12 Stats., articulates standards for both mausoleums and public mausoleums. Specifically, s. 157.12 (2) (a) Stats., references mausoleums while s. 157.12 (2) (b) Stats., references public mausoleums. As such, certifications and temporary certifications apply to public mausoleums.

Comment: The Clearinghouse suggested the Board add a provision regarding its intent to charge a reasonable fee for inspections and certifications.

Response: A rule provision was added that addresses a fee schedule for inspections and certifications.

Comment: The Clearinghouse inquired about the application of the rule with respect to columbaria, crematory authorities, and public mausoleums.

Response: The draft was revised to clarify that while the Board has statutory authority over mausoleums, they do not have authority over columbaria and crematory authorities. Additionally, a note was revised for clarity and added to the applicable section.

All other remaining recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A