

Clearinghouse Rule 22-023

STATE OF WISCONSIN
CEMETERY BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CEMETERY BOARD
CEMETERY BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Cemetery Board to create CB 4.06 relating to care fund income.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 157.11 (9g) (a) 2 and 157.11 (9g) (c), Stats

Statutory authority: ss. 157.19 (2) (d) and 440.905 (2), Stats

Explanation of agency authority:

Section 157.19 (2)(d), Stats., provides “the cemetery board shall promulgate rules establishing reasonable requirements and standards for the approval of changes under pars.(b) and (c).”

Section 440.905 (2), Stats., provides “[t]he board has rule-making authority and may promulgate rules relating to the regulation of cemetery authorities, cemetery salespersons, and cemetery preneed sellers...”

Related statute or rule: N/A

Plain language analysis:

The objective of the proposed rule is to revise CB 4 to reflect the Cemetery Board’s position that care fund income consisting of interest income, dividends, and capital gains, may be withdrawn by the cemetery authority for legal use without Cemetery Board approval.

Summary of, and comparison with, existing or proposed federal regulation: None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A

Comparison with rules in adjacent states:

Illinois: According to Illinois Compiled Statutes chapter 760 section 3, net income earned on invested care funds “shall be allocated and used for the purposes specified in the transaction by which the principal was established in the proportion that each contribution bears to the entire sum invested.” [760 ILCS 100/3]

Iowa: According to Iowa Administrative Code chapter 191, Iowa uses the total return distribution method to plan for distributing care fund income. The income is to be used in the best interest of the cemetery and must be authorized by the instrument that established the care fund. [191 IAC 101.8(2) and (3)(d)]

Michigan: According to Michigan Compiled Laws Section 456.536, each cemetery is required to maintain an “irrevocable endowment and perpetual care trust fund.” Income on this fund “shall be used only for endowment care”. [MCL 456.536(16)(1)]

Minnesota: According to Minnesota Statutes Section 306.42, interest accrued on a permanent care and improvement fund is to be used by the cemetery’s board of directors to care for that cemetery. [2021 Minnesota Statutes 306.42]

Summary of factual data and analytical methodologies: The Board previously clarified the use of care fund income in a position statement available on the Department of Safety and Professional Services’ website. Upon further review, the Board then determined that a clarification laid out in rule would also be beneficial to it’s licensees.

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

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. None were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis are attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Dana Denny, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone (608) 287-3748; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Dana Denny, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing which will be held on May 10, 2022, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1 CB 4.06 is created to read:

CB 4.06 Income from care funds. Income earned on a cemetery care fund account includes any capital gains, any interest, and any dividends.

- (1) Only the principal deposits into cemetery care funds required under s. 157.11 (9g) (c), Stats must remain intact.
- (2) Income earned on a cemetery care fund may be withdrawn and used for the purposes specified in s. 157.11 (9g) (a) 2.
- (3) Board approval is not required to withdraw income earned on a cemetery care fund account.

SECTION 2 EFFECTIVE DATE. 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) (intro.), Stats.

(END OF TEXT OF RULE)
