

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chair Sharon Schwartz at 3:30 p.m. on March 18, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Lana Gordon, Excused
Representative Michael Peterson, Absent

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Kristen Kellems, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Carol Bertram, Committee Assistant

Conferees appearing before the Committee:

Chris Biggs, Secretary of State
Diane Minear, Deputy Assistant Secretary of State, Legal Counsel
Kathy Sachs, Secretary of State's Office
Windi Kohake, Secretary of State's Office
William Stalter, Stalter Legal Services
Pam Scott, Executive Director, Kansas Funeral Directors Association
Michael E. Land, Chief Financial Officer, Penwell-Gabel Funeral Homes & Cemeteries
Esther H. Batemen, Stewart Enterprises, Inc.
Kathleen Taylor Olsen, Kansas Bankers Association
Mark McGilley, Service Corporation International

Others attending:

See attached list.

After opening the meeting, Chair Schwartz drew the Committee's attention to a letter received from Mike Tabor, Director of Seward County Landfill and Waste Management Services, in opposition to **HB 2701 - Municipalities; organized solid waste collection service act**. He had requested that his letter be included in the record (Attachment #1).

Martha Dorsey, Legislative Research Department, reviewed **HB 2712** detailing each new section and those sections where language is being deleted. She noted there are two funds (1) the preneed cemetery merchandise contract fund, and (2) the merchandise trust fund. Also the most notable definition change in the bill is the definition of funding requirements. She explained it is that portion of the purchase price equal to 50 percent of the retail price of the preneed cemetery merchandise described in the preneed merchandise contract. Also Ms. Dorsey noted there are a lot of requirements of the trustee noted in the bill.

Chair Schwartz opened the hearing on **HB 2712 - Cemetery corporations, cemetery merchandise contracts, permanent maintenance fund**

Proponents:

Chris Biggs, Secretary of State, appeared before the Committee in support of **HB 2712**. He presented an overview as to why the Secretary of State's Office feels the need to have this bill passed by the Committee. He stressed the importance of having the Trustee of the funds making monthly reports to the Secretary of State's Office rather than yearly reports. No written testimony was provided the Committee.

Questions and answers followed where it was suggested that if the loss is over \$25,000 imprisonment would be required.

Kathy Sachs, Secretary of State's Office, appeared before the Committee on behalf of Diane Minear, Deputy Assistant Secretary of State, in support of **HB 2712** (Attachment #2). She pointed out three provisions of the bill which the Secretary of State's Office believes are key elements of the bill: (1) To secure the statutory trust

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irregularities quickly and fairly; and (3) to create an efficient but not overly burdensome method of auditing the trust funds. She noted an amendment to the Permanent Maintenance Fund: To reduce costs, a cemetery with less than \$100,000 in permanent maintenance funds may keep the funds in certificates of deposit or a business savings account while still complying with reporting requirements. Also noted were two amendments to the Preneed Merchandise Trust Fund: (1) The funding requirement will change from 110% of wholesale costs to 50 % of retail price, making it easier for the cemetery to maintain records and for the Secretary of State to audit, and (2) to achieve parity with existing permanent maintenance law which increases the penalty for misuse of the merchandise trust fund from a misdemeanor to a level 7, non-person felony.

Questions and answers followed . Also, at this time, Mindi Kohake, Secretary of State's Office, responded to questions.

William Stalter, Stalter Legal Services appeared before the Committee in support of **HB 2712** (Attachment #3). He discussed three areas of the bill: (1) Wholesale Trusting, (2) Fiduciary Standards, and (3) Audits, and stressed that one of his main reservations of the bill is that it requires that the fiduciary must have a presence in the state.

Questions and answers followed.

Pam Scott, Executive Director, Kansas Funeral Directors Association, appeared in support of **HB 2712** (Attachment #4). She addressed two issues relating to the bill, the trusting requirements and the reporting requirements. She stated, in regard to the reporting requirements contained in the bill, KFDDA believes that improved reporting requirements will better protect the consumer and will allow the Secretary of State's Office to more quickly discover instances of abuse of preneed funds. Also, KFDDA believes this bill is an improvement over the current cemetery trusting requirements because the public will better understand the dollar amount that is being trusted.

Questions and answers followed.

Michael Land, Chief Financial Officer, Penwell-Gabel Funeral Homes and Cemeteries, appeared before the Committee in support of **HB 2712** (Attachment #5). He stated the bill strengthens the existing statutes governing the maintenance and merchandise trust funds held by Kansas cemeteries and, more importantly, provide additional protection to Kansas consumers.

Questions and answers followed.

Ernest Kutzley, AARP Kansas Advocacy Director, submitted written-only testimony in support of **HB 2712** (Attachment #6).

Warren J. Newcomer, Owner of Penwell-Gabel, submitted written-only testimony in support of **HB 2712** (Attachment #7).

Neutral:

Kathleen Taylor Olsen, Kansas Bankers Association, presented testimony in support of **HB 2712** with three suggested amendments: (1) to further define "Kansas financial institution" on pages 3, 10 and 12 of the bill, (2) add "Kansas trust company" to the list of potential trustees, and also (3) on page 12 to add "or national credit union administration" in section (a). (Attachment #8)

Questions and answers followed.

Mark McGilley, Service Corporation International, appeared before the Committee in support of **HB 2712**. He pointed out four areas of concern with the bill: (1) The numerous monthly reporting requirements; (2) the requirement that a trustee be either a Kansas financial institution or a federally chartered institution physically located within Kansas; (3) the requirement that insurance carriers would have to provide "immediate" notice

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to the Secretary of State's Office in the event of a lapse in insurance; and (4) Section 16-321(d) would impose an "administrative fee" for each preneed contract. (Attachment # 9)

Questions and answers followed.

Esther H. Bateman, Director of Trust Administration for Stewart Enterprises, appeared before the Committee in opposition to **HB 2712** (Attachment #10). She noted three key areas which are of concern: (1) burdensome record-keeping requirements, (2) definition of Trustee, and (3) conflicting language.

Questions and answers followed.

Chair Schwartz closed the hearing on **HB 2712**.

The Chair turned the Committee's attention to **HB 2713**.

Martha Dorsey, Legislative Research Department, presented an overview of **HB 2713**. She stated this bill would allow the Attorney General, at the request of the Secretary of State, to audit certificates of deposits, savings accounts, permanent maintenance funds, and cemetery merchandise trust funds. If it is determined that a permanent maintenance fund or cemetery merchandise trust fund is under-funded due to inadequate deposits or unauthorized distributions, the cemetery corporation would be allowed to propose and implement a plan for correcting the fund's deficiencies.

Chair Schwartz opened the hearing on **HB 2713 - Cemetery corporations, enforcement by secretary of state**.

Kathy Sachs, Secretary of State's Office, appeared before the Committee to offer comments concerning **HB 2713** (Attachment # 11). She stated current law limits the Secretary of State's remedies to injunction and receivership which may lead to the cemetery vesting with the municipality and becoming a financial burden on the taxpayers. Also the Secretary of State's Office asks for an effective date of publication in the *Kansas Register* so that they can begin immediately.

Questions and answers followed.

Proponents:

The Chair recognized Michael E. Land, Chief Financial Office, Penwell Gabel Funeral Homes and Cemeteries, who stated that his testimony in support of **HB 2713** was submitted along with **HB 2712**.

The Chair stated that the written-only testimony submitted by Ernest Kutzley, AARP Kansas Advocacy Director, in support of **HB 2713** was submitted along with testimony for **HB 2712**.

The Chair recognized Mark McGilley, Service Corporation International, who stated that his previous testimony on **HB 2712** stands and that he fully supports **HB 2713**.

Neutral:

Esther H. Bateman, Director of Trust Administration for Stewart Enterprises, stated that her testimony on **2713** was submitted along with **HB 2712**.

Chair Schwartz closed the hearing on **HB 2713**.

It was moved by Representative Slattery, seconded by Representative Goico that the Committee move the contents of **HB 2713** into **SB 75** to become **House Substitute for SB 75**. The motion carried

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It was moved by Representative Goico, seconded by Representative Seiwert that the Committee recommend House Substitute for SB 75 favorably for passage. The motion carried.

Discussion concerning **HB 2679 - Cemeteries; abandoned; sale by municipalities; conditions** followed. A document containing suggested changes to the bill was distributed and explained by Kathy Sachs, Secretary of State's Office (Attachment #12).

It was moved by Representative Slattery, seconded by Representative Holmes that SB 2679 be tabled. The motion carried.

Representative Mah referred to **HB 2478 - Cities; annexation; county approval of certain annexations** which had been passed by the Committee on February 16, 2010. She suggested the word "unless" on line 14 of the bill be removed and the word "if" be inserted in its place. It was moved by Representative Mah, seconded by Representative Otto that the contents of HB 2478 with the small language change be inserted into SB 118 to become House Substitute for SB 118. The motion carried. It was moved by Representative Mah, seconded by Representative Otto that the Committee recommend House Substitute for SB 118 favorably for passage. The motion carried.

Chair Schwartz thanked the Committee for all the work and extra time they put in these past two years.

The meeting was adjourned at 5:35 p.m.

S.S.

Representative Sharon Schwartz, Chair

HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: *March 18, 2010*

NAME	REPRESENTING
<i>Haley Delle</i>	<i>KCWA</i>
<i>Ether H Bateman</i>	<i>Stewart Enterprises, Inc.</i>
<i>Bill Stalter</i>	<i>Stalter Legal</i>
<i>MIKE LAND</i>	<i>Penwell-Cabel</i>
<i>Gene Kirby</i>	<i>MT. MUNCIE LS, Ks.</i>
<i>Diane Miler</i>	<i>Sec. of State</i>
<i>Mack Smith</i>	<i>KS St Bd of Mortuary Arts</i>
<i>Sean Miller</i>	<i>CAPITOL STRATEGIES</i>
<i>Kathy Olsen</i>	<i>KS Bankers Assn.</i>
<i>Mindi Kohake</i>	<i>Mindi Kohake</i>

Please use black ink

SEWARD COUNTY LANDFILL

March 14, 2010

The Honorable Sharon Schwartz
Chairman, Local Government Committee
Kansas State House of Representatives
300 Sw 10th Street
Topeka, Kansas 66612

Dear Honorable Representative Schwartz,

My name is Mike Tabor, Director of the Seward County Landfill and Waste Management Services. This weekend I was informed of H.B. 2701 and wanted to send some comments on behalf of myself and the Seward County Commission to the committee for future reference and discussion on this matter. Passage of H.B. 2701 could have severe effects on operations of waste collection by cities and counties. K.S.A. Statute 65-3405 currently makes cities or counties responsible for solid waste management activities in their counties and a plan outlining such activities. K.S.A. 65-3410 specifically gives cities and counties the authority to manage solid waste within its boundaries. K.S.A. 65-3410 (a) states "Each city or county or combination of such cities and counties may provide for the storage, collection, transportation, processing and disposal of solid wastes and recyclables generated within its boundaries; and shall have the power to implement any approved solid waste management plan and to purchase all necessary equipment, acquire all necessary land, build any necessary buildings, incinerators, transfer stations, or other structures, lease or otherwise acquire the right to use land or equipment and to do all other things necessary for a proper effective solid waste management system and recycling program including the levying of fees and charges upon persons receiving service."

H.B. 2701 has parts that appear to interfere with a city or a county performing its duties and protecting its vested interests in solid waste facilities like large regional landfills and collection activities currently allowed under K.S.A. 65-3410. Large private waste companies are attempting to monopolize hauling and disposal operations in many areas of the state. Large waste companies have come into our state and bought or built both landfills and hauling operations. H.B. 2701 is an attempt by large waste companies to eliminate competition by government owned entities.

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Attachment # 1

March 15, 2010

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Southwest Kansas is experiencing the attempted monopolization of both collection and disposal facilities by one of the large waste companies. H.B. 2701 is an attempt by these companies to further limit competition. The term displace in Section 4 is very broad as to the meaning and the effects from a municipal collection operation. This bill also has timelines which are unreasonable because many cities and or counties currently operate some type of solid waste operation and this would severely limit any expansion needed to maintain current services and market share.

Seward County specifically has invested more than 10 million dollars in a regional landfill facility which was required under state statutes. H.B. 2701 would hinder our ability to operate it without interference from large private companies attempting to monopolize areas. By tying the hands of government, the citizens of this area would be at the mercy of one company.

Seward County adamantly opposes passage of H.B. 2701 or anything similar to it. The prior legislation forcing counties to upgrade landfills to new standards needs to be considered so that these expensive facilities counties had to provide can be operated and protected as they have and keep the cost of waste disposal reasonable for our constituents. H.B. 2701 could take away this ability.

Seward County would like to participate in any further discussions on this matter before the committee. We would be available at any time. Thank you for your time and consideration in this matter.

Sincerely,



Mike Tabor, Director
Seward County Landfill & Waste Management Service

Cc: Seward County Commission
Mary Bloomer, Seward County Administrator
Representative Mitch Holmes
Representative Mario Goico
Representative Lana Gordon
Representative Steve Huebert
Representative Bill Otto
Representative Joe Siewert
Representative Delia Garcia
Representative Ann Mah
Representative Mike Peterson
Representative Mike Slattery
Representative Carl Holmes
Melissa Wangemann, KAC General Counsel
Dan Diepenbrock, County Counsel

HOUSE COMMITTEE ON LOCAL GOVERNMENT
TESTIMONY OF THE SECRETARY OF STATE: HB 2712
MARCH 18, 2010

Madame Chairwoman and Members of the Committee:

The secretary of state appreciates the opportunity to appear before you today. HB 2712 seeks to accomplish the goals of the Cemetery Study Group which include: 1) To secure the statutory trust funds but still allow the cemetery to make a profit; 2) to give the secretary of state the ability to respond to irregularities quickly and fairly; and 3) to create an efficient but not overly burdensome method of auditing the trust funds. As proposed, HB 2712 is divided into two parts: The merchandise trust fund and the permanent maintenance fund. The following summarizes the key elements of the bill:

HB 2712 Amends both the Merchandise Trust Fund and the Permanent Maintenance Fund, effective January 1, 2011:

- The cemetery's financial officer who is responsible for making trust fund deposits will be required to obtain a fidelity bond or insurance against employee dishonesty.
- Defines trustee as a Kansas financial institution and requires Kansas trustee to retain fiduciary liability.
- Requires cemeteries to file monthly deposit and withdrawal reports with secretary of state and the trustee. This eliminates the need for a comprehensive annual report and the cemetery is no longer required to file all contracts with the trustee. This will allow the secretary of state to discover irregularities significantly earlier.
- Allows the secretary of state to ask the attorney general to file an action with a court for an accounting.
- The bills include an administrative fee for each preneed merchandise contract and each burial space sold.

Amendments specific to the Preneed Merchandise Trust Fund:

- The funding requirement will change from 110% of wholesale costs to 50% of retail price, making it easier for the cemetery to maintain records and for the secretary of state to audit.
- To achieve parity with existing permanent maintenance law, HB 2712 increases the penalty for misuse of merchandise trust fund from a misdemeanor to a level 7, non person felony.

Amendment specific to the Permanent Maintenance Fund:

- To reduce costs, a cemetery with less than \$100,000 in permanent maintenance funds may keep the funds in certificates of deposit or a business savings account, while still complying with reporting requirements. Current law sets the threshold at \$45,000.

We have asked for a delayed effective date to allow the secretary of state and the industry time for implementing new processes. Thank you for the opportunity to appear before you and I will stand for questions.

Diane Minear
Deputy Assistant Secretary of State, Legal Counsel

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HB2712 Testimony
March 18, 2010
House Local Government Committee

William Stalter, JD
Stalter Legal Services
The Preneed Resource Company
Overland Park, Kansas

Twenty-four years of legal representation of funeral homes, cemeteries and death care fiduciaries. Founder of The Preneed Resource Company (PRC), a third party account administrator for preneed fiduciaries (including Bank of America, US Bank and UMB Bank). Ten years experience administering preneed funeral trusts and five years experience administering preneed cemetery trusts.

PRC provides preneed administration in Missouri, Nevada, Nebraska, and Illinois. We do not offer an administrative program for Kansas cemeteries. For the most part, PRC has not established a Kansas program because of the same issues identified by the Kansas Secretary of State as their problems with enforcing the current law.

Wholesale Trusting

A trusting requirement based on wholesale costs of merchandise was intended to insure the cemetery operator could purchase the consumer's marker, vault or urn. However, that cost varies substantially from cemetery to cemetery, and from vendor to vendor. Because an item of merchandise may not be purchased for many years, the cost can increase dramatically. The cost can change because the original vendor goes out of business, or discontinues the item. We have always viewed this aspect of the Kansas law as problematic when required to assure the fiduciary was in compliance with maintaining the minimum funding requirement.

In contrast, retail based trusting requirement sets a standard that can be easily confirmed. While the bill's trusting requirement of 50% of retail is lower than neighboring states, the accrual of income should insure the trust has sufficient assets to fund the cemetery's obligations to the consumer.

Fiduciary Standards

The current law is vague with regard to the fiduciary's obligations and is antiquated with regard to its emphasis on depository accounts. Despite having language similar to that imposed on funeral trusts, the current law has been interpreted by the Attorney General to require a domiciled fiduciary.

While the legislation would clarify what institutions may serve as cemetery fiduciary in Kansas, I disagree with the requirement that the fiduciary must have a 'presence' in the state. Few institutions are willing to accept the duties that accompany these trusts. Many

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of the institutions willing to serve as a preneed fiduciary (or a permanent maintenance fiduciary) are unaware that state death care laws impose special duties upon the fiduciary. While the state may have valid interests in controlling the management of these trusts, that interest should be balanced by allowing operators to contract with out of state fiduciaries that will consent to administer the trust pursuant to Kansas' cemetery law.

The legislation will help to clarify the investment standards that the fiduciary must follow. The prudent invest rule reflects the modern portfolio approach that is based on diversification and prudence, standards that fiduciary institutions incorporate into their asset management policies.

Audits

While fiduciary institutions are accustomed to regulatory audits, the infrequency of preneed audits and the lack of published guidelines discourage banks and trust companies from accepting these accounts.

While the legislation's monthly reporting may seem burdensome to operators, this frequency can be accommodated so long as the reporting formats are consistent with those utilized by operators and fiduciaries. The proposed reporting should also reduce the need for on-site audits. While the legislation would expand the fiduciary's duties, the Kansas Secretary of State must exercise discretion against shifting too great a burden to fiduciaries.



KANSAS FUNERAL DIRECTORS ASSOCIATION

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March 18, 2010

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EXECUTIVE DIRECTOR

PAM SCOTT
Topeka

To: House Local Government Committee

From: Pam Scott, Executive Director

Re: House Bill No. 2712

Madam Chair and members of the Committee, I appear before you today on behalf of the Kansas Funeral Directors Association (KFDA) in support of House Bill No. 2712.

The KFDA would like to address two issues relating to this bill, the trusting requirements and the reporting requirements.

The bill requires the trusting of 50% of the retail price of preneed cemetery merchandise described in a preneed merchandise contract. It is our understanding that this is approximately equal to the current trusting requirement of 110% of wholesale. The KFDA believes this bill is an improvement over the current cemetery trusting requirements because the public will better understand the dollar amount that is being trusted. We do not believe, however, that trusting of only 50% of the retail price of preneed cemetery merchandise is adequate. Kansas funeral homes trust 100% of the funds paid by consumers for funeral goods and services under prearranged funeral agreements written in Kansas.

As regards the reporting requirements contained in the bill, the KFDA believes the improved reporting requirements will better protect the consumer and will allow the Secretary of State's office to more quickly discover instances of abuse of preneed funds.

Thank you for the opportunity to appear before you today. I would be happy to stand for any questions you may have.

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Date: 3-18-10

Attachment # 4

Before the
House Local Government Committee

March 18, 2010

HB 2712 and HB 2713

Testimony of
Michael E. Land, C.P.A.
Chief Financial Officer
Penwell-Gabel Funeral Homes & Cemeteries

For the record, my name is Michael Land. I am the chief financial officer of the company which owns and operates the Penwell-Gabel Funeral Homes and Cemeteries of Kansas. Penwell-Gabel owns and operates two cemeteries and 16 funeral homes here in Kansas. For the past 18 years I have provided financial management for the Penwell-Gabel cemeteries in Hutchinson and Topeka. I am here today to testify in support of House Bill 2712 and 2713 which strengthen the existing statutes governing the maintenance and merchandise trust funds held by Kansas cemeteries and, most importantly, provide additional protection to Kansas consumers.

The primary purposes of the cemetery trust funds are to ensure that consumers who plan in advance will realize the benefit of their purchases when their need arises, and that the maintenance of cemetery grounds is provided for in perpetuity. A majority of consumers purchase cemetery merchandise and property many years in advance of need. A percentage of each sale is therefore placed into the cemetery trust funds to ensure delivery of services and merchandise at the time of need. A cemetery relies on the income generated from preneed sales to fund daily operations. These new statutes will increase, in most cases, the amount placed in trust from current levels, an important feature for consumers' peace of mind.

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In recent years several cemeteries across Kansas have experienced difficulties in properly maintaining their trust funds. This has negatively impacted many Kansas consumers. The existing statutes also provide a rather cumbersome method of calculating the amount of money which is to be maintained in these funds while requiring only an annual accounting of the fund activity to the Secretary of State.

Under the proposed bill, the method of calculating the amount of money which is to be maintained in the trusts would be simplified. Cemeteries also would be required to report trust fund activity to the Secretary of State monthly instead of annually. The fund trustee which holds the funds would now be required to report trust fund activity on a monthly basis to the secretary of state rather than annually. Additionally, the bill provides more enforcement of all statutes regarding cemetery merchandise and maintenance funds, which we at Penwell-Gabel certainly welcome.

We recognize that these measures will increase the administrative time and expense required for cemetery operators and the fund trustees to maintain their trust fund records, but the enhanced reporting of the fund activity is the in the best interest of the consumer.

At Penwell-Gabel, we assist more than four thousand Kansas families every year with their cemetery and funeral needs. We believe House Bill 2712 and 2713's focus on increased transparency and enhanced consumer protection is important for the citizens of the State of Kansas and we fully support the efforts of the Secretary of State's office to protect Kansans with these measures.

I appreciate the opportunity to speak with you and am happy to answer any questions you might have.



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March 18, 2010

The Honorable Sharon Schwartz, Chair
House Local Government Committee

Re: HB 2712 & HB 2713 – Cemetery Corporations

Good afternoon Madame Chair and members of the House Local Government Committee. My name is Ernest Kutzley, AARP Kansas Advocacy Director. AARP represents the views of more than 345,000 members across the state of Kansas. Thank you for allowing us to provide written comments in support of HB 2712 and HB 2713.

For many older consumers, a funeral is their third-largest expenditure, only less costly than the purchase of a home and an automobile. A recent AARP survey found that two in five people age 50 and older reported they had been contacted about the advance purchase of funerals or of burial goods and services. Fraud, bankruptcy, and violation of fiduciary responsibility place these contracts at risk.

AARP encourages preplanning funeral arrangements but urges caution when paying through a preneed contract or other formal arrangement.

AARP believes that states should:

- Protect consumers from misappropriation of preneed funeral and cemetery funds and ensure consumer restitution.
- Regulate and require portable, written contracts for all preneed funeral and burial arrangements.
- Require insurance-funded preneed contracts and trust arrangements that are state-regulated.
- Give the purchasers of preneed contracts a statutory lien so that consumers have priority over unsecured creditors with claims against the seller.

(Over)

- Establish guarantee funds to provide a source of recovery for preneed consumers harmed by a seller's or provider's theft, fraud, or bankruptcy.
- Ensure independent audit reports of all trust funds submitted regularly to the state enforcement agency.
- Pass laws that apply sound actuarial principles to ensure that consumers' preneed funds will be available to purchase the funeral and burial goods and services selected.
- Pass laws and regulations that prohibit abusive, deceptive, and unfair practices in the sale and maintenance of burial spaces and other goods and services and in the disposition of remains.
- Require registration of all preneed providers.
- Prohibit the addition of finance charges and interest on installment contracts for preneed goods and services unless they are delivered to the consumer.
- Encourage efforts to coordinate the regulations of the various state departments that oversee funerals, crematories, cemeteries, third-party sellers, and preneed goods.
- Provide adequate authority and funding for a state enforcement agency to perform periodic field audits and investigate complaints.
- Establish civil remedies and criminal penalties for unfair, deceptive, and fraudulent practices by preneed providers.
- Enact laws on preneed funeral and burial contracts to ensure a level playing field between consumers and sellers.
- Ensure that cemeteries should be required to establish escrow accounts designed to ensure that income will always be available for the continued upkeep and maintenance of the cemetery.

Therefore, we respectfully request your support of HB 2712 and HB 2713.

Thank you.



Penwell-Gabel

Funeral Homes, Crematories & Cemeteries
A Tradition of Caring® Since 1893

March 11, 2010

The Honorable Representative Sharon Schwartz
300 SW 10th Street
Topeka, KS 66612-1504

RE: House Bill 2712 and 2713

Dear Representative Schwartz:

I am writing in support of House Bill 2712 and 2713. As owner of Penwell-Gabel Funeral Homes & Cemeteries, I strongly support the Legislature's efforts to strengthen the existing statutes governing the maintenance and merchandise trust funds held by Kansas cemeteries and provide additional protection to Kansas consumers.

Penwell-Gabel has been serving Kansas families since 1893 and owns and operates two cemeteries and 16 funeral homes across the state. We are proud to assist more than 4,000 Kansas families every year with their cemetery and funeral needs. As a fourth-generation funeral director, I am proud to continue my family's tradition of putting the needs of Kansas families above everything else.

Making decisions about the services of a cemetery or funeral home can be a difficult and emotional process for a family. I fully support all efforts to provide transparency in every aspect of the cemetery and funeral business, so that families fully understand the choices that they are making and can be confident that their needs will be met today and in the future. I believe that these bills go a long way to ensuring that Kansas families are protected.

At Penwell-Gabel, we hold ourselves to the highest possible standards of professionalism and care. We are committed to the wellbeing of Kansas families and applaud the efforts of the Legislature to further protect consumers with the proposed legislation.

Thank you for your attention to this issue.

Sincerely,

Warren J. Newcomer
Owner

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Local Government

Date: 3-18-10

Attachment # 7



March 17, 2010

To: House Committee on Local Government

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2712: Cemetery Merchandise Contracts and Trust Funds

Madam Chair and Members of the Committee:

Thank you for the opportunity to present testimony today regarding **HB 2712** which provides guidance on cemetery merchandise trust funds. On behalf of the Kansas Bankers Association and the Kansas Bankers Association Trust Division, I would like to respectfully request two amendments to the bill.

Section 4 of the bill amends K.S.A. 16-320 by providing additional definitions of terms used throughout the bill. Subsection (i) defines "trustee" as:

- (1) A Kansas financial institution with the authority to provide trust services; or*
- (2) A federally chartered institution that has a physical location within the state of Kansas and the authority to provide trust services.*

The first amendment we would like for you to consider, is to further define "Kansas financial institution". We believe the intention of the language, is to include all financial institutions chartered under the laws of Kansas having trust powers. We have suggested language in the attached balloon amendment that we believe would clarify this intent.

The second amendment we would like to request, is to add "Kansas trust company" to the list of potential trustees. Kansas trust companies are incorporated in this state, and are regulated by the Office of the State Bank Commissioner. They are bound by the provisions applicable to them in the state banking code (K.S.A. 9-2101 et. seq.), as well as to the general statutory provisions applicable to all trusts and trustees. We have made this suggested addition to this definition in the attached balloon amendment as well.

We would also note that the attached balloon amendment similarly amends New Section 15(f) of the bill as it pertains to the permanent maintenance fund.

Thank you Madam Chair, for the Committee's time and attention to our request.

1 corporation 50% of the retail price of the preneed cemetery merchandise
 2 covered described in a prepaid the preneed merchandise contract. Whole-
 3 sale costs shall be determined by the cemetery corporation on the basis
 4 of such quotations and price lists as are available to the cemetery and
 5 100% of the retail price of any preneed burial product or preneed service,
 6 including distributable earnings.

7 (h) "Distributable earnings" means income and capital gains, less any
 8 reasonable costs incurred by the trustee, including a reasonable fee for
 9 services and applicable taxes and costs.

10 (i) The trustee means:

11 (1) ~~A Kansas financial institution with the authority to provide trust~~
 12 ~~services; or~~

13 (2) a federally chartered institution that has a physical location within
 14 the state of Kansas and the authority to provide trust services; or

A bank, savings and loan association,
 savings bank or credit union organized
 under the laws of this state

15 Sec. 5. K.S.A. 16-321 is hereby amended to read as follows: 16-321.

16 (a) Any cemetery corporation entering into any prepaid merchandise con-
 17 tract shall establish and maintain a cemetery merchandise trust fund un-
 18 der K.S.A. 16-322. All prepaid merchandise contracts shall be in writing.

19 (b) A cemetery corporation entering into a prepaid merchandise con-
 20 tract shall be entitled to retain all of the purchase price under the prepaid
 21 merchandise contract until it has received an amount equal to 35% of the
 22 purchase price of the cemetery merchandise sold in a prepaid merchan-
 23 dised contract.

3) a trust company organized under the laws of
 this state

24 (c) After the cemetery corporation has received the amounts it is
 25 entitled to receive under subsection (b) of this section, all payments of
 26 the purchase price to the cemetery corporation under a prepaid mer-
 27 chandise contract shall be deposited by the cemetery corporation in a
 28 cemetery merchandise trust fund until such time as the requirements of
 29 subsection (d) of this section have been satisfied or delivery is made of
 30 the cemetery merchandise. Thereafter, all payments of the purchase price
 31 in excess of the minimum funding requirements may be retained by the
 32 cemetery corporation. Deposits shall be made within 10 business days
 33 after the moneys are received.

34 (d) Annually, as of December 31, each cemetery corporation shall
 35 determine the wholesale cost for all cemetery merchandise covered by a
 36 prepaid merchandise contract for which funds are then held in a cemetery
 37 merchandise trust or in an individual merchandise account. If the
 38 amounts held with respect to a prepaid merchandise contract exceed the
 39 minimum funding requirement the excess shall be paid by the trustee of
 40 the cemetery merchandise trust to the cemetery corporation. In such
 41 event, no further deposit shall be required with respect to the prepaid
 42 merchandise contract until such time as the amounts held no longer ex-
 43 ceed the minimum funding requirement. If the minimum funding re-

1 (c) "Funding requirement" means that portion of the purchase price
2 equal to 15% of the purchase price, but not less than \$25 of a burial
3 space.

4 (d) "Permanent maintenance fund" means a certificate of deposit, a
5 business savings account or an irrevocable trust fund whose proceeds are
6 derived from not less than 15% of the purchase price of the following:
7 Grave lots, grave spaces, burial or interment rights and developed or
8 existing lawn crypts, mausoleum spaces or niches. The total amount of
9 the deposit shall not be less than \$25 per burial space.

10 (e) "Purchase price" means the gross amount, less sales tax, if any, to
11 be paid for cemetery burial space. The purchase price does not include
12 finance charges or charges for credit life insurance.

13 (f) "Trustee" means:

14 (1) ~~A Kansas financial institution~~ with the authority to provide trust
15 services; ~~or~~

A bank, savings and loan association,
savings bank or credit union organized
under the laws of this state

16 (2) a federally chartered institution that has a physical location within
17 the state of Kansas and the authority to provide trust services; ~~or~~

18 (g) "Trustor" means the cemetery corporation responsible for making
19 deposits in a permanent maintenance fund, which is subject of a trust.

3) a trust company organized under the laws of
this state

20 Sec. 16. K.S.A. 17-1311 is hereby amended to read as follows: 17-
21 1311. (a) A cemetery corporation shall maintain, ~~in a trust company lo-~~
22 ~~cated within the state of Kansas, a state or national bank located within~~
23 ~~the state of Kansas, a state or federally chartered savings and loan asso-~~
24 ~~ciation located within the state of Kansas or a federally chartered savings~~
25 ~~bank located within the state of Kansas with a trustee,~~ a percentage of
26 the purchase price of each burial ~~lot space~~ sold by it, or any payment on
27 such burial ~~lot space~~, not less than 15% of such purchase price, for the
28 permanent maintenance of the cemetery within which the burial ~~lot space~~
29 lies, but the total amount set aside shall not be less than \$25 for each
30 burial ~~lot space~~ at the time of conveyance of such ~~lot burial space~~. *If the*
31 *cemetery corporation allows the purchaser of the burial space to make*
32 *installment payments, not less than 15% of such installment payment shall*
33 *be deposited into the permanent maintenance fund.* Deposits to the per-
34 manent maintenance fund shall be made within ~~45 days of receipt of~~
35 ~~moneys for which deposits are required to be made~~ 30 days following the
36 ~~end of each calendar month after the moneys are received.~~ Moneys placed
37 in such fund under the provisions of K.S.A. 17-1308, and amendments
38 thereto, shall be credited for the purposes of fulfilling such requirement.
39 Moneys in such fund may be held and invested ~~to the same extent as is~~
40 ~~provided in subject to the requirements of subsection (a) through (f) of~~
41 K.S.A. 58-24a02, and amendments thereto, but the total amount of money
42 invested in any mortgage upon real property shall not exceed an amount
43 equal to 75% of the market value of such property at the time of such

TESTIMONY

By

Mark McGilley, Service Corporation International

HB 2712 & HB 2713

House Committee on Local Government

Thursday, March 18, 2010

Madam Chair, Representatives, my name is Mark McGilley and I am Service Corporation International's Director for the Kansas City market. I appear today to express our support for House Bill 2713 and discuss our concerns with House Bill 2712. SCI is a company that owns both funeral homes and cemeteries, including Resthaven Gardens of Memory in Wichita and Chapel Hill Memorial Gardens in Kansas City, Kansas.

I commend the Secretary of State's staff for working during the interim to thoroughly review the current cemetery trusting statutes and for allowing the interested parties, SCI included, to participate. A significant amount of the early discussion revolved around whether the Secretary of State's office was the appropriate entity to conduct annual audits on trust funds. Perhaps a regulatory body with a full audit staff such as the Bank Commissioner, Insurance Department, etc. would be more appropriate. If the responsibility is to remain with the Secretary of State we hope you will note that they receive no funding to audit the cemetery trusts, nor do they possess flexible or intermediate authority to address small transgressions in record keeping or reporting. We support fees that would provide the funding necessary to conduct the audits to ensure the solvency of the trusts. Further, although they are not included in these bills, we would also support additional penalties for those who violate this act, particularly those who fail to properly trust or improperly remove money from the cemetery trusts.

Not surprisingly, due to recent market conditions a number of cemetery trusts statewide are currently underfunded. House Bill 2713 gives the Secretary of State a useful tool by which they can correct the existing funding deficiencies. We believe this bill represents good policy which will protect consumers and minimize the chances of cemeteries being taken into receivership.

House Bill 2712 represents a total rewrite of the cemetery merchandise and perpetual care statutes. Despite our support for the general intent of the bill we do have several concerns. Our first significant concern involves the numerous monthly reporting requirements included in the bill. Both the sections governing merchandise and permanent maintenance trusts require a trustee to make monthly reports to the Secretary of State's Office regarding deposits, withdrawals, calculations of interest, capital gains, etc. Furthermore, HB 2712 would require monthly reports by cemetery corporations to both the Trustee and Secretary of State's Office regarding sales of preneed cemetery merchandise, preneed burial products and services. We believe monthly reports impose unnecessary and costly burdens on the administration of the trusts and would discourage many financial institutions from serving as trustees. The administrative burden monthly reporting requirements would place on cemetery owners and trustees would greatly overshadow any benefit which could otherwise be obtained through the more practical option of annual reporting. We would suggest continued annual reporting but also support granting the Secretary of State the flexibility to require more frequent reporting or auditing in specific cases when they deem necessary.

Another concern we have with HB 2712 is the requirement that a trustee be either a Kansas financial institution or a federally chartered institution physically located within Kansas. We believe this requirement would be overly restrictive. Many of the largest financial institutions in the country, including two of the most prominent banks serving as trustees in the funeral and cemetery industry currently operate under state charters. We suggest the members of the Committee revise the proposed policy to include state chartered or federal chartered financial institutions so long as they are authorized to do business in the State of Kansas. The bill clearly requires trustees to personally submit to Kansas jurisdiction. If needed it could further require the trustee to appoint the Secretary of State as its agent for service of process. We believe that by allowing the most financially secure and experienced financial institutions the opportunity to serve as funeral and cemetery trustees in Kansas, both consumer protection and consumer choice are strengthened.

We are also concerned with the requirement that insurance carriers would have to provide "immediate" notice to the Secretary of State's Office in the event of a lapse in insurance. From a

practical standpoint this “immediate” standard is impossible to meet. We believe a more reasonable standard would which simply requires the carrier to notify the Secretary of State’s office as to the lapse in coverage. There also appears to be some ambiguity as to when evidence of insurance must be provided. We suggest the “10 day” provision in 2(a) be repeated in New Section 14(a).

Finally, Section 16-321(d) would impose an “administrative fee” for each preneed contract. We are not opposed to a fee to provide the funding necessary to audit the cemetery trusts. However, this section does not provide any limitation on fees and we are concerned with the totally open ended nature of this language. We would suggest that the administrative fee be set by the Secretary of State but that the fee not exceed \$25 per contract sold after the effective date of this act and that the fees be utilized to audit the required trusts.

We believe there are still a number of issues that need to be addressed in HB 2712. Additionally, with a new Secretary of State appointed this week, and that same position up for election this fall, we think those individuals should have the opportunity to evaluate the issues and work with the legislature and affected parties to determine the most appropriate and effective regulatory mechanism for these trusts.

Thank you for this opportunity to present testimony and I am happy to answer questions at the appropriate time.

TM

Stewart Enterprises, Inc.

caring for people * making a difference™

1333 S. Clearview Parkway

Jefferson, LA 70121

March 17, 2010

NASDAQ: NMS
Symbol: STEI

The Honorable Representative Schwartz and
Local Government Committee Members
300 SW 10th Street
Topeka, KS 66612-1504

Dear Representative Schwartz and members of the Local Government Committee,

I am writing to the Committee in my capacity as Director of Trust Administration for Stewart Enterprises, Inc., a publicly-traded company in the death care industry. Stewart Enterprises, Inc. operates four cemeteries and three funeral homes in Kansas and we employ seventy-three employees in this state. The group I oversee handles all administrative functions related to the trusting of preneed contracts, and works closely with other individuals as it relates to compliance with laws, trustee issues, etc. We have been working with the staff of the Secretary of State Office since last summer on the proposed revisions to the Kansas legislation and appreciate the opportunity to us to participate in that process as well as the hearing today.

The cemetery operators as well as the staff from the Secretary of State Office (SOS) agree that the current law is very burdensome to administer, especially as it relates to trusting at wholesale cost, and does not provide adequate safeguards for the consumer. Both the operators and the SOS representatives are hoping the current law will be amended in order to facilitate certain goals: to protect consumers; to implement a law that will not be so burdensome for the cemeteries that it hinders their ability to operate; and to provide for an easier way for the SOS to ensure compliance with the law, especially while auditing the cemeteries.

While the bill that is represented today tries to accomplish some of these goals, we believe it fails in key areas, as detailed below:

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Date: 3-18-10

Attachment # 10

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1. - Burdensome record-keeping requirements.

The current proposal imposes substantial record-keeping requirements on both the cemeteries and the trustees, and will significantly increase in the amount of information the SOS staff would

have to process. Based on the current bill, cemeteries would have to file three monthly reports: (1) all contracts sold; (2) all deliveries; and (3) a third report which is accompanied by a payment of an administrative fee for each contract sold.

The trustee also would be burdened with increased reporting. It would be required to provide a monthly report of all deposits and all distributions made, capital gains and losses, and all income earned in the account. In addition, on an annual basis it would be required to report regarding the calculation of distributable income.

As you might suspect, implementing these new requirements would not be without increase cost for both the cemetery and the trustee. This is especially true since, understandably, the SOS would be establishing "the form and manner" in which to submit these reports, which might necessitate changes to computer systems, processes, etc. currently in place for the cemeteries and the trustees. In addition, all these administrative requirements clearly will take a toll on the time available for serving the families when they need us most, or might result in being forced to hire additional staff in order to keep up with all the necessary monthly reporting.

It is hard to imagine how the staff at the SOS's office would be able to manage all this information at the current staffing levels, or to obtain any meaningful, comprehensive information. As drafted, even with the proposed additional reports, the SOS still would not have enough information to get a complete, clear picture of the outstanding liabilities for any particular cemetery. For example, although the bill requires the cemetery to report on new sales, it does not required to report on cash received on a per contract basis. So while the SOS may know from the reports that a certain cemetery has sold \$100,000 worth of contracts, it would not know if it has collected \$20 or \$90,000 on those contracts. We do not believe the current provisions would provide the appropriate information to the SOS or the protection to the customers that the legislature should be looking to accomplish.

While we understand and agree with the need to implement an improved record-keeping and reporting mechanism to keep the SOS as up to date as possible on the outstanding liabilities for the entities it regulates; however, the current proposal takes this idea too far; it imposes restrictions that would ultimately increase costs to the operators, who will in turn be forced to

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pass such cost to the consumers; it limits the ability and time available for the operators to assist families; and, although it would provide "information overload" to the SOS office, it would not be of the meaningful kind, the level of information necessary to assist them when issues arise. We believe input should be sought from the operators to achieve a reasonable balance between the need for information and the burden of providing it.

2. - Definition of Trustee:

The bill's definition of trustee, which requires that it be physically located in Kansas, or that it be a Kansas financial institution, is very restrictive. Many of the largest financial institutions that are willing to provide services to the death care industry or have the systems in place to handle some of the more sophisticated structures or large accounts, may not meet these requirements. Several of the trustees that specialize in this industry, and have staff knowledgeable and dedicated to the cemeteries, such as Regions Bank or SunTrust, would not meet the requirements. Since the purpose of the regulations should be to protect the consumers, the legislature should consider allowing large, strong financial institutions, regardless of where they are located or chartered, to become trustees. Restricting cemeteries to search for a trustee within a pool of smaller, local financial institutions that may not be financially strong or knowledgeable of the death care industry, would not be in the best interest of the consumer or the cemeteries. In addition, some of these financial entities may not be able to comply with all the record-keeping requirements imposed by the bill, as already described above, and may effectively preclude their ability to serve as trustees.

If the intent of the legislature is to ensure that the funds are administered by strong financial institutions that are knowledgeable of the specific requirements of the death care industry and can handle the administration, investment and record-keeping of the funds correctly to protect the consumers' funds, then it should consider removing the physical restrictions imposed on the trustee and direct its focus on safeguarding the funds regardless of demographics.

3. - Conflicting language:

The bills contain many provisions that provide conflicting information and will result in inconsistencies and confusion, and ultimately inability to follow the law. An in-depth review of the current language should be carried out and the bill redrafted to clearly state the requirements.

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One example of the conflicting language is the distribution of income from the permanent maintenance fund. As you know, this fund is established so that the income therefrom would be used for the upkeep and maintenance of the cemetery, while the corpus remains in perpetuity to continue to generate the income.

While addressing the permanent maintenance fund, the bill proposes that "income earned may be dispersed to the cemetery" but does not address the timing of such disbursement. The *monthly* report required to be provided by the trustee should reflect "interest withdrawn", which would imply the cemetery can withdraw income monthly. That is consistent with the need by the cemetery for such income on an on-going basis in order to maintain the property. However, the new section 17-1312(d) provides that "*Annually*, as of December 31, the trustee... shall determine and disperse to the cemetery corporation, the income..." Based on this provision, it would seem to indicate the cemetery would have to wait until after December 31 every year before being able to receive any income. It would not be appropriate for the cemetery to have to wait a whole year before receiving funds for services already performed related to the maintenance of the cemetery.

The calculation of the amount required to trust for merchandise is another example of where the law contradicts itself and would create confusion in multiple ways. While the law addresses what to do if the customer makes installment payments, it does not address how to handle the trusting if the customer pays for the contract in a lump sum. It is also unclear what the basis for trusting should be. While Section 5 K.S.A. 16-321 (c) states that trusting should be based on the purchaser payments (i.e., net amount received), the definition of purchase price refers to gross price. So if merchandise is sold at a discount, which amount should be used as the basis to trust – the net price or the gross one? Conflicting requirements will inevitably lead to inconsistent application.

As we all know, the devil is in the details, and any bill under consideration should address those details in a consistent manner.

If allowed the opportunity, we would like to assist the SOS and the Committee in drafting a bill that accomplishes the goals the legislature has in mind: protecting the consumer while providing ease of administration for all parties concerned. As the bill currently stands, we have very serious concerns regarding its applicability and do not believe it would accomplish the necessary goals.

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If I can be of any assistance, I can be reached at the contact information listed below. Thank you again for the opportunity to participate in this process.

Esther H. Bateman

Esther H. Bateman

Director, Trust Administration

Stewart Enterprises, Inc.

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HOUSE COMMITTEE ON LOCAL GOVERNMENT
TESTIMONY OF THE SECRETARY OF STATE: HB 2713
MARCH 18, 2010

Madame Chairwoman and Members of the Committee:

The secretary of state appreciates the opportunity to appear before you today to talk with you about HB 2713.

Paragraph (a) of New Section 1 of HB 2713 allows the attorney general, at the request of the secretary of state, the authority to initiate an action for an accounting of the permanent maintenance fund.

Paragraph (b) permits a cemetery whose permanent maintenance fund is underfunded, to propose a repayment plan to be approved by the secretary of state

Paragraph (c) grants the secretary of state the authority to equitably resolve the results of an audit. If the audit indicates a shortfall that, in the opinion of the secretary of state can be corrected, we would like the ability to work with the cemetery to achieve compliance without moving directly towards receivership.

Section 2 applies the same language to the merchandise trust fund law found in chapter 16 of the K.S.A.'s.

Current law limits the secretary of state's remedies to injunction and receivership which may lead to the cemetery vesting with the municipality and becoming a financial burden on the taxpayers. Our proposal gives the secretary of state another option.

We have asked for an effective date of publication in the Kansas Register so that we may begin immediately.

Thank you for the opportunity to speak with you today. I will stand for questions.

Diane Minear
Deputy Assistant Secretary of State, Legal Counsel

Local Government
Date: 3-18-10
Attachment # 11

Thank you for the opportunity to testify concerning House Bill no. 2679 concerning the sale of cemetery property by a municipality.

1. In section 1(b), the Office of the Secretary of State thinks that in addition to the interests of the lot owners, the interests of the taxpayers and prepaid merchandise and service consumers should also be considered prior to the sale.
2. This bill does not require the purchaser to fully fund the permanent maintenance fund. K.S.A. 17-1312d deems a cemetery that has neglected to establish or maintain a permanent maintenance fund in accordance with the requirements of Kansas law to have forfeited its franchise. The Attorney General, upon request of the Secretary of State, shall then begin action for the appointment of a receiver for such cemetery corporation and to dissolve the same. While, HB 2713 proposes giving the Secretary of State the authority to equitably resolve such instances, it has not yet passed.
3. In section 1(c) the proposed merchandise funding language is not consistent with current cemetery law as defined in K.S.A. 301 et seq. and K.S.A. 16-320 et seq.
4. This bill does not address any discrepancies or omissions in the "accounting of any prepaid services or items".
5. Does this bill address how consumers who were financially harmed during a previous transition from private ownership to the municipality will be compensated?
6. Would the proposed language be better placed in K.S.A. 17-1368?

Local Government

Date: 3-18-10

Attachment # 12

AN ACT concerning cemeteries; amending K.S.A. 2009 Supp. 47-1367-17-1368 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2009 Supp. 47-1367 17-1368 is hereby amended to read as follows: ~~47-1367-17-1368. (a) Whenever the attorney general determines the existence~~

~~of an abandoned cemetery in this state, the attorney general shall immediately proceed to dissolve the cemetery corporation owning the same. Upon the dissolution of such corporation, title to all property owned by the cemetery corporation shall vest in the municipality in which the cemetery is located, and any liens, perfected or unperfected, against such property shall be immediately quashed, null and void and unenforceable on and after January 1, 2003, and the permanent maintenance fund, together with all investments then outstanding, and all books, records and papers of such corporation shall be transferred to the treasurer of such municipality and shall become the property thereof. Upon the transfer of such property and funds, the governing body of such municipality shall care for and maintain such cemetery with any moneys of the cemetery corporation including the principal of and income from the permanent maintenance fund and, if such moneys are insufficient to properly maintain such cemetery, with funds of the municipality. The principal of and income from the permanent maintenance fund may be deposited in any appropriate fund of the municipality or may be invested in the manner provided in K.S.A. 17-1311, and amendments thereto, but shall be used exclusively for care and maintenance of such cemetery. Any municipality required, pursuant to this act, to care for and maintain a cemetery may contract with any individual, firm, corporation or association for the care and maintenance thereof or for the sale of unsold burial lots and the opening and closing of graves. Except as provided in K.S.A. 17-1371 and amendments thereto, no such contract or any other agreement entered into by such municipality shall be deemed to relieve such municipality of the duties and responsibilities imposed under the provisions of this act except as provided.~~

~~(b) In the event that a municipality, as defined by K.S.A. 17-1366, and amendments thereto, is ordered to take title pursuant to actions taken pursuant to subsection (a), and the municipality determines that the cemetery may potentially be operated in a financially viable manner by another private owner and that the interests of the lot owners will be served and the property may be returned to the tax rolls, the municipality may place the property up for sale in the same manner provided by law to dispose of other municipal property. it is in the best interest of the taxpayers, lot owners, and prepaid merchandise and service consumers, then the cemetery may be placed for sale.~~

~~The sale shall be allowed to be completed and closed subject to the following requirements:~~

- ~~(1) The potential buyer must demonstrate financial ability to operate the cemetery in the foreseeable future;~~
- ~~(2) the potential buyer must demonstrate experience in successfully operating cemeteries in the past and an understanding and compliance with Kansas regulatory provisions related to private operations of cemeteries in Kansas; and~~
- ~~(3) any proceeds from such sale, as may remain after payment of any expenses incurred by the municipality related to operation of the cemetery, either as a receiver or owner, shall be placed in a trust fund controlled by the municipality to be held for permanent maintenance of the cemetery at such future date if the cemetery is later placed in the municipality's care. And the new owner shall not be liable for underfunding of the permanent maintenance fund that occurred prior to the sale. The purchaser shall comply with funding requirements established in K.S.A. 17-1311 et seq.~~

~~(c) Upon such sale, an accounting of any prepaid services or items shall be made by the municipality to the purchaser and the purchaser shall be required to place sufficient funds to cover funding requirements pursuant to K.S.A. 16-320 et seq. and K.S.A. 16-301 et seq. If discrepancies or omissions are found in such accounting, the purchaser is still responsible for providing such merchandise or services. 110% of the wholesale costs of the prepaid merchandise or services into an interest-bearing Kansas trust account. The purchaser shall be responsible for providing the merchandise or services at the time of need of the decedent and may withdraw the funds deposited to cover those expenses, specifically the wholesale cost thereof, upon provision of satisfactory documentation to the trustee that the items have been provided. In the event that the deposits and interest in the account are not sufficient to cover 110% of the costs of the outstanding services and merchandise at the end of any given year, the purchaser shall deposit sufficient funds to bring the trust account up to the level that such costs are covered. Any excess funds shall remain in the account until such time as all prepaid merchandise and services are provided and at that time any remainder shall be moved to the perpetual care fund for the cemetery.~~

~~Sec. 2. K.S.A. 2009 Supp. 47-1367 17-1368 is hereby repealed.~~
~~Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.~~