

Memo to File

**HOUSE ACTION**

On February 2, the House Committee on Government Operations amended and then passed **H.367** (our bill) unanimously. (See Attachment A.) The committee sent the bill to the full House for action, and the House passed it the following day (February 3).

The amended bill set aside the language that we had proposed and that Rep. Yantachka had sponsored. Through a creative amendment offered by Rep. Lefebvre, our proposal was replaced with provisions that align the requirements for cemetery associations (like Morningside) with those that municipalities must follow for trust funds that support perpetual care of town cemeteries.

The House-approved bill strikes out entirely the one-sentence **Sec. 1 of 18 V.S.A. §5437**. (See Attachment B.) This section requires cemetery associations to invest trust funds in accordance with **18 V.S.A. §5309** (Attachment C). §5309 is the antiquated 1979 statute that we have been seeking to be rid of. (It is not exactly clear what happens to §5309 from our perspective. But the explicit link that requires cemetery associations to follow its investing rules is disabled through the H. 367 amendment.)

**Sec. 1 of 18 V.S.A. §5437** would read as follows:

*A cemetery association shall invest trust funds in the same manner as town cemeteries pursuant to section 5384 of this title and may delegate the management of cemetery association funds pursuant to subsection (b)(3) of that section.*

This bill accomplishes our objectives by linking cemetery associations to two existing statutes:

1. **Subsection (b)(3) of §5384** (Attachment D), enacted in 2017, authorizes selectboards or trustees of public funds to “delegate management and investment of town cemetery funds to the extent that it is prudent under the terms of the trust or endowment and in accordable with section 3415.”
2. **14 V.S.A. §3415** (Attachment E), enacted in 2009, is the Uniform Prudent Management of Institutional Funds Act. It authorizes institutions “to delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances.”

Taken together, the connection to these two existing statutes enables cemetery associations to invest in a publicly traded security that is:

- Registered with the SEC;
- Issued by a registered investment company;
- A registered corporate bond;
- A municipal security;
- A federally insured deposit; or
- A federally guaranteed bond.

As for delegating investment management functions, cemetery associations must act in good faith and be prudent in:

- Selecting an agent;
- Establishing the scope and terms of the delegation; and
- Reviewing the agent's actions and monitoring performance and compliance.

The House bill now goes to the Senate.

#### **SENATE ACTION**

The Senate Committee on Finance heard **S. 253** (Attachment F) on February 2. This bill, which was sponsored by Sen. Ram Hinsdale (joined by Sen. Chittenden), contains the same language that Rep. Yantachka had initially proposed in H. 367. Treasurer Beth Pearce participated in the hearing.

There was consensus that provisions in §5437 are antiquated and unapplicable, and in need of change. The treasurer, committee chair, and legislative counsel were all aware that the House Committee on Government Operations was in the process of proposing to strike this section entirely in order to reform the investment guidelines and requirements.

The principle of aligning established rules for municipalities and town cemeteries with cemetery associations was discussed at the hearing. The related statutes—§5384 and §3415—were also identified. Support was expressed for tying in these statutes, as the House was in the process of doing.

The hearing concluded with Treasurer Pearce and Committee Chair Cummings agreeing to have staff look further into the investment statutes and their possible application to private cemetery associations.

Peter Richardson  
February 3, 2022