

We are pleased that this bill has been proposed. Notwithstanding the comments below, we support its passage if it means passage as is or nothing at all – it's definitely a step in the right direction. We feel compelled, however, to make some suggestions simply because of the interaction of Section 5384 with other statute sections. Amendment of these interrelated statutes at the same time insures consistency and removes the ambiguity and overlap that currently exists.

Following is the short version of why the investment standard for cemetery funds that is proposed for amendment should apply to all cemetery funds, as well as public trustee funds which includes cemetery funds: (That these statutes should be updated is a given – these comments have more to do with consistency among the various sections that govern cemetery funds.)

18 VSA Section 5306; Section 5309: The proposed bill amendment to 18 VSA Section 5384 addresses how cemetery funds received by a town can be invested. Sections 5306 and 5309 address investment of cemetery funds as well. Section 5306 appears to apply to perpetual care funds, and also addresses surplus funds from gifts and allows for investment of such funds in i.e. U.S. or Vermont bonds, shares of a Vermont bank or a federal bank with a principal office in Vermont, Vermont mortgages and up to 35% in U.S. stocks, or in the manner required for the investment of trust funds. It is unclear how these cemetery funds differ from the cemetery funds described in the section for which amendment is proposed (5384).

Section 5437 : This provision applies to private cemetery association funds as defined in Section 5436 and provides that such funds shall be invested in accordance with Section 5309. Again there is some confusion as to whether these private cemetery funds are more like those addressed in 5309 or 5384, or even what the difference between the two sections is. The bottom line is they are all cemetery funds and it would seem that the statutory investment standard should be the same for all of them.

24 VSA Section 2432: This provision applies to public trustee funds INCLUDING cemetery funds (see Section 2431), and limits how these funds can be invested. The proposed amendment to 18 VSA Section 5384 proposes that notwithstanding those restrictions, in towns that elect trustees of public funds, cemetery funds shall be invested by the trustees in a way that is prudent under the Institutional Funds Act, thereby imposing a different investment standard on a portion of the public trustee funds. Trustee funds consist of gifts to the town by i.e. trust or will for a specific purpose such as cemeteries, parks, schools, libraries etc. The town manages the funds and makes sure the intent of the donor is carried out. Trustee funds and cemetery funds are essentially the same – 24 VSA Section 2431 specifically defines public funds as including cemetery funds. Investment standards for both should, therefore, be consistent.

We remain in support of the amendment as proposed. We believe, however, that by extending the amendments to address the statute sections we've described is an efficient way to get rid of the ambiguity and inconsistency, not to mention need to update, that currently exists. We would, therefore, even more strongly support the repeal or amendment of 18 VSA Sections 5306 and 5309 so that the investment standard for all cemetery funds held by a town are updated and treated the same; the amendment of Section 5437 governing private cemeteries to be consistent with 18 VSA Section 5384; and the amendment of 24 VSA Section 2432 governing investment of public trustee funds to be consistent with 18 VSA Section 5384.