

Statement of: Morningside Cemetery Association
East Charlotte, VT

RE: S. 253 Hearing of the Senate Finance Committee
February 2, 2022

Existing Law

The statute that currently governs the investment of “perpetual care” funds by cemetery associations is 18 V.S.A. §5309. It was enacted in 1979. The law requires:

The principal sum of funds shall be invested in bonds of the United States or the state of Vermont, or in the bonds or in notes issued in anticipation of taxes and authorized by vote of any town, village, or city in this state, or loaned upon the first mortgage on real estate in this state a sum not in excess of sixty percent of the value of such real estate, or upon collateral of any of the above securities of equal value with the loan, or in shares of a savings and loan association of this state or share amounts of a federal savings and loan association with its principal office in this state and to the extent to which the withdrawal or repurchase value of such shares or accounts may be insured by the Federal Savings and Loan Insurance Corporation, or stock in a federal bank or a safe deposit company or a national bank or state bank or trust company organized and doing business in the United States. Up to thirty-five percent of the association’s assets may be invested in common or preferred stocks of corporations organized and existing under the laws of any state of the United States of America, or may be invested in the manner required for the investment of trust funds, unless otherwise authorized by the donor: No assets of the association may be loaned to a member, officer, trustee, or director of any such cemetery agency.

Key Elements of §5309

This statute directs at least 65% of funds to be invested in:

1. U.S. Treasuries or bonds issued by the State of Vermont; or
2. Municipal bonds or tax anticipation notes issued by Vermont cities and towns; or
3. First mortgages not to exceed sixty percent (60%) loan-to-value; or
4. Collateral of eligible securities of equal value with the loan; or
5. Shares of Vermont savings and loan associations; or
6. Shares of federal savings and loan associations with principal offices in Vermont and that are insured by Federal Savings and Loan Insurance Corporation (FSLIC); or
7. Stock in federal banks or safe deposit companies, or national banks or state banks or trust companies organized and doing business in the United States [“bank stocks”].

Corporate bonds, even those that are designated as investment grade, are ineligible. The law limits investments in common or preferred stocks of corporations to no more than 35%.

Major Flaws

- The existing regulations have been in effect 42 years. They are outdated and inoperable.
- Savings and loan associations, both state and federal, do not exist anymore as financial institutions distinct from commercial banks. The Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), enacted in the late-1980s, erased their unique features.
- The Federal Savings and Loan Insurance Corporation (FSLIC), which the law says *must* insure federal S&Ls in which investments are made, ceased to exist more than 30 years ago.
- Banking and investment tools and strategies have evolved dramatically. For example, mutual funds are not eligible investments for cemetery associations under this state law.

S. 253

The bill would allow cemetery associations to manage perpetual care funds in accordance with investment policies adopted by the association, as follows:

Cemetery associations that hold funds in trust for their perpetual care may invest these assets in accordance with investment policies adopted by their organizations. Such policies shall specify the purpose and objectives for managing and administering the funds. Portfolios must be well diversified, using instruments and allocations that are prudently selected and intended to achieve short- and long-term objectives. Associations may delegate management to investment managers that are registered with the U.S. Securities and Exchange Commission (SEC) and thus have fiduciary responsibility for the management of the assets.

S. 253 removes state-dictated investment requirements and replaces them with cemetery association policies for investment portfolios that contain (a) diversified instruments and (b) prudent allocations. Associations are encouraged to hire investment managers that are fiduciaries. The Morningside Cemetery Association supports repeal of the existing statute and instituting provisions that are consistent with the purposes of this bill.