

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 2:30 p.m. on February 21, 2011, in Room 346-S of the Capitol.

All members were present except Representative Hineman who was excused.

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department  
Eunice Peters, Office of Revisor of Statutes  
Florence Deeter, Committee Assistant

Conferees appearing before the Committee:

Kathy Sachs, Deputy Assistant Secretary of State  
John Peterson, Service Corporation International  
Kathy Olsen, Kansas Bankers Association

Others attending:

See attached list.

**Hearing On: HB 2195 – Municipalities; organized solid waste and recycling collection service act.**

The Chairman called the meeting to order for consideration of an amendment to **HB 2195**. Representative Seiwert moved to accept the amendment. Seconded by Representative Billinger.

Following discussion and questions, Staff Eunice Peters explained the new law represents a compromise in the time period of the adoption of an ordinance or resolution set forth in establishing collection services in the municipality (Attachment 1). The motion passed.

Representative Seiwert moved to recommend the bill as favorable for passage as amended. Seconded by Representative Lane, the motion passed.

**Hearing on HB 2240 - Cemetery corporations; trust funds; secretary of state, attorney general enforcement powers.**

Staff Eunice Peters provided a memorandum containing language to clarify the nuances of cemetery merchandise trust funds and permanent maintenance funds (Attachment 2). She noted that the trustee of merchandise trust funds must submit a quarterly report to the Secretary of State's office, and is subject to audits. Ms. Peters said the bill expressly states the purpose of the maintenance trust fund is to "maintain the corpus of the fund."

Kathy Sachs, Deputy Assistant Secretary of State, spoke as a proponent of **HB 2240**. She indicated that Kansas law requires certain cemeteries to maintain two types of trust funds for protection of purchases. (Attachment 3). Ms. Sachs stated that the role of the Secretary of State is to ensure those funds are available when needed. She commented on the key elements of the bill and provided a list of the compromises agreed upon by all involved.

John Peterson, speaking for Mark McGilley, Director, Service Corporation International, said the changes in the bill comprise a rewrite of the cemetery merchandise and perpetual care statutes (Attachment 4). Mr. McGilley submitted a balloon amendment for consideration (Attachment 5). He noted that consensus with the Secretary of State's office has been obtained. Mr. McGilley acknowledged that a capped fee of \$25 per contract or burial space is adequate for providing administrative fees to audit cemetery records.

Kathy Olsen, speaking on behalf of the Kansas Bankers Association and the Kansas Bankers Association Trust Division, said that the language of **HB 2240** states clearly the requirements for holding cemetery trust funds (Attachment 6). She recommends the committee consider the bill favorable for passage.

The Chairman closed the hearing of **HB 2240**.

The Chairman requested the committee consider the balloon amendment to **HB 2240**. Representative Seiwert moved to accept the amendment. Representative Otto seconded the motion. The motion passed.

## CONTINUATION SHEET

Minutes of the House Elections Committee at 2:30 p.m. on February 21, 2011, in Room 346-S of the Capitol.

Representative Seiwert moved to pass the bill as amended. Representative Otto seconded the motion. The motion passed.

The meeting was adjourned at 3:10. The next meeting is scheduled for March 3, 2011.

## HOUSE LOCAL GOVERNMENT

## GUEST LIST

DATE: Feb. 21, 2011

[illegible]

## HOUSE BILL No. 2195

By Committee on Local Government

2-7

[Material in blue is new; Material in red is stricken;  
material in highlighted yellow, technical amendment;  
Line numbers on proposed amendment are not consistent with original bill]

AN ACT concerning municipalities; establishing the organized collection service act.

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

Section 1. Sections 1 through 3, and amendments thereto, shall be known and may be cited as the organized collection service act.

Sec. 2. As used in this act:

(a) "Municipality" means any county, city, township and other political subdivision or taxing subdivision including any board, bureau, commission, committee or other agency having authority to create, regulate or otherwise impact the delivery of collection services.

(b) "Organized collection service" means a system for collecting solid waste, recyclables or both, including franchise, organized collection, or a process in which a **city municipality** goes from multiple haulers to one single contracted hauler in which a specified collector, or a member of an organization of collectors, is authorized to collect from a defined geographic service area or areas some or all of the solid waste or recyclables that is released by generators.

(c) "Recyclables" has the meaning as the term is defined by KSA 65-3402, and amendments thereto.

(d) "Solid waste" has the meaning as the term is defined by K.S.A. 65-3402, and amendments thereto.

Sec. 3. (a) A municipality may establish an organized collection service as a municipal service by ordinance, in the case of a city, or by resolution, in the case of other municipalities. The ordinance or resolution shall incorporate any franchise, license, or negotiated contract or contract let by bid using one or more collectors or an organization of collectors.

(b) At least 180 days before adopting such an ordinance or resolution, the governing body of the municipality shall announce its intent to consider adoption of an organized collection service, stating specific goals to be achieved, detailed justification for any franchise fees and all other reasons for considering such a service by passage of a resolution of intent. The resolution of intent shall be published once in the **official**

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1 newspaper of ~~greatest circulation in~~ the municipality. The resolution of  
2 intent shall give notice of a public hearing to be held at least 30 days prior  
3 to consideration of the adoption of the resolution of intent on the issue  
4 and shall invite the participation of interested persons in the planning and  
5 establishing of the organized collection service, including all licensees or  
6 other persons operating solid waste or recyclables collection services in  
7 the municipality as of the date of announcement of its intent to organize  
8 collection in the municipality.

9 (c) During a 90-day period following the adoption of the resolution of  
10 intent, the municipality shall develop a plan for organized collection  
11 service. During this period, the municipality shall invite and employ the  
12 assistance of all licensees or other persons operating solid waste or  
13 recyclables collection services in the municipality. All licensees or other  
14 persons operating solid waste or recyclables collection services in the  
15 municipality shall be allowed to participate in all planning meetings.

16 (d) The municipality shall provide 30 days notice prior to the hearing  
17 on the proposed plan to all licensees or other persons operating solid  
18 waste collection or recyclables services in the municipality.

19 (e) The plan shall:

20 (1) Describe in detail the procedures used for development of the plan  
21 for organized collection service and compliance with all required notice  
22 provisions;

23 (2) evaluate the proposed organized collection plan in regard to the  
24 following:

25 (A) Achieving the stated goals;

26 (B) minimizing displacement and economic impact to current solid  
27 waste collectors;

28 (C) ensuring participation in the decision-making process of all  
29 interested parties, including all licensees or other persons operating solid  
30 waste or recyclables collection services in the municipality as of the date  
31 of the resolution of intent to organize collection in the municipality; and

32 (D) maximizing efficiency in solid waste collection; and

33 (3) provide detailed justification for any tax, franchise or similar fee;  
34 ~~which in any event shall not exceed the municipality's expense of~~  
35 ~~administering the proposed organized collection program.~~

36 (f) (1) A municipality may not commence organized collection service  
37 pursuant to this act for a period of at least ~~two years~~ 18 months from the  
38 adoption of an ordinance or resolution establishing such service. During  
39 the ~~two-year~~ 18-month period, the municipality shall not displace any  
40 person licensed to operate solid waste collection services in the  
41 municipality.

42 (2) If for any reason a municipality does not implement an organized  
43 collection service by passage of an ordinance or resolution within one

1 year of the passage of a resolution of intent, the process shall be started  
2 over as provided in this section.

3 Sec. 4. This act shall be applied to all municipalities regardless of  
4 the stage of implementation of an organized collection system.

5 Sec. 5. This act shall take effect and be in force from and after its  
6 publication in the Kansas register.



## MEMORANDUM

To: House Committee on Local Government

From: Eunice C. Peters, Assistant Revisor

Re: HB 2240

Date: 2/19/11

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HB 2240 deals with cemetery corporation accounting as it relates to: (1) Cemetery merchandise trust funds; and (2) permanent maintenance funds. This bill applies to individuals or entities that maintain permanent maintenance funds (*i.e.*, cemetery corporations). This bill becomes effective upon publication of the statute book *and* January 1, 2012 (date based on compromises between the parties).

Please be advised that if this bill is worked, the following will need technical amendments: Page 2, line 31, the "c" in cemetery should not be capitalized; Page 3, line 14, remove "," in between "product, or service".

### ***Cemetery merchandise trust funds***

Current law requires a cemetery corporation to establish and maintain a cemetery merchandise trust fund. Containing some definitional changes, this bill maintains that requirement for a cemetery corporation that enters into a preneed merchandise contract for the sale of preneed cemetery merchandise or preneed burial products or services with an individual. (Sections 4, 5.) This bill would further amend the statutory requirements concerning this trust fund process.

This bill expressly states that the purpose of the trust fund "is to maintain the corpus of the trust fund with the goal that the growth of the corpus will be at least equal to the wholesale costs of the preneed cemetery merchandise, burial products or services at the time of delivery or need." (Section 5.) To reach that purpose, this bill provides the following:

- Cemetery corporations. This bill would increase the reporting requirements by cemetery corporations to the secretary of state from annually to quarterly, and the information required to be reported. (Sections 5, 6, 8.) Any detailed information obtained by the secretary of state concerning the cemetery corporation is confidential, except to certain parties. (Section 1.) This confidentiality provision would expire on July 1, 2016. (Section 1.)
- Trust fund. This bill would require the trust fund to be maintained with a trustee (current law), which the bill further defines the trustee qualification in section 6. This bill would also amend the funding requirement of the trust fund from 110% of the wholesale to 50% of the retail price of any preneed cemetery merchandise, and

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include 100% of the retail price of any preneed burial product or service, including distributable earnings. (Section 4.)

- Trustee. This bill would require a trustee, as defined in section 4, to administer the trust fund until delivery. (Section 6.) Administration requires the trustee to invest the trust funds, but allows the trustee to recover all reasonable costs, including a fee for its services, from the trust fund. (Sections 4, 5, 6.) The trustee is required to report quarterly to the secretary of state certain information about the trust fund, and be subject to audits by the secretary of state. (Sections 6, 8.)
- Trust agreement. This bill would require cemetery corporations to file the trust agreement with the secretary of state. (Section 14.) The trust agreement would be effective only upon written approval by the secretary of state and if in compliance with the reporting requirements. (Section 6.) This bill would also require approval from the secretary of state before terminating, transferring or amending the trust agreement. (Section 5.)
- Criminal. This bill would criminalize the misuse of the trust funds to be a severity level 7, nonperson felony. (Section 7.)

### ***Permanent maintenance funds***

This bill expressly states the purpose of the permanent maintenance fund, which “is to maintain the corpus of the fund.” (Section 15.)

- Trust fund/trustee. This bill would require a cemetery corporation to maintain a permanent maintenance fund in an irrevocable trust with a trustee, unless the market value of the fund is less than \$100,000. (Section 15, 17.) The funding requirement of the trust fund would be equal to 15% of the purchase price, but not less than \$25. (Section 2.) If the market value is less than \$100,000, then the cemetery corporation may be held in CD’s or savings accounts. (Section 17.) In either manner, the income earned from the permanent maintenance fund may be dispersed to the cemetery; all capital gains shall be allocated to principal. (Section 15.) Quarterly reporting to the secretary of state is required. (Section 17, 18.) Annual reporting to the secretary of state is also required for income from the trust fund. (Section 18.) Any detailed information obtained by the secretary of state is confidential, except to certain parties. (Section 20.) This confidentiality provision would expire on July 1, 2016. (Section 20.) If legal action is taken against the cemetery corporation, the trust funds shall not be subject to any payment of damage awards. (Section 3.)
- Trust agreement. This bill would also require approval from the secretary of state before terminating, transferring or amending the trust agreement. (Section 15.)
- Cemetery corporations. This bill would increase the reporting requirements by cemetery corporations to the secretary of state from annually to quarterly, and the information required to be reported. (Sections 18.)



HOUSE COMMITTEE ON LOCAL GOVERNMENT  
TESTIMONY OF THE SECRETARY OF STATE, FEBRUARY 21, 2011

Mr. Chairman and Members of the Committee:

On behalf of Secretary of State Kris Kobach, thank you for the opportunity to appear before you today and to testify in support of HB 2240.

Kansas law dictates that citizens are entitled to extra protections with regard to cemetery purchases by requiring certain cemeteries to maintain two types of trust funds. The role of the secretary of state (SOS) is to ensure that monies paid by consumers are deposited, invested and maintained in a manner that will ensure the funds are available at the time of need.

In June of 2009, the SOS's office formed a study group to examine cemetery laws and practices. The group had three guiding principles from which they operated: 1) Protect consumers of burial products and services; 2) protect the cemetery's ability to make a profit; and 3) create a system that was easy to audit. HB 2240 is a product of the study group's collective ideas and hard work.

Key elements of the Bill include:

- Increase the amount to be trusted from 110% of wholesale to 50% of retail. This change will allow cemeteries to calculate the minimum funding requirement only once instead of on a yearly basis.
- Quarterly reporting. Current law requires the cemetery make annual reports to the SOS. This makes it difficult to detect or correct a deficiency when it is over a year old before we are made aware of the problem.
- Corrects a problem in the law that prohibits the underfunded cemetery from withdrawing funds to pay for merchandise. Many cemeteries are underfunded due to the depressed economy and they are forced to pay for merchandise out of their operating fund. Some cemeteries illegally draw from the merchandise trust fund to pay for merchandise.
- Requires the trustees to submit quarterly reports to the SOS itemizing deposits and withdrawals from the trust fund.
- Requires the trustee to be organized under the laws of Kansas and have a physical presence in Kansas
- Permits a co-trustee relationship wherein the co-trustee submits to Kansas jurisdiction and agrees to be governed by the laws of Kansas.
- Lowers trustee fees for small cemeteries. The minimum balance that a permanent maintenance fund can have before a cemetery owner must hire the services of a trustee was raised from \$45,000 to \$100,000. These funds may be held in CD's or savings account. All reporting requirements apply.

The parties have worked together to reach a compromise and to come up with a workable solution for all. A list of the compromises are as follows:

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- The SOS agreed to Industry's balloon amendment permitting a co-trustee relationship.
- The SOS agreed to incorporate the Kansas Bank Association's balloon amendment language regarding Kansas Trustees.
- The SOS agreed to quarterly reports vs. monthly reports to accommodate the cemetery industry.
- The SOS agreed to increase the minimum threshold balance of \$45,000 to \$100,000 (with regard to contracting with a trustee for the cemeteries over \$100,000 in pmf) in order to reduce the financial burden on small cemeteries.
- The SOS agreed to Industry's request that distributable earnings be allocated quarterly vs. annually.
- The SOS agreed to Industry's request that income/interest earned on pmf be paid at least annually vs. annually.
- The SOS and the Industry have agreed to a delayed effective date to allow for an appropriate transition.

Thank you for the opportunity to appear before you today on behalf of secretary of state Kris Kobach. I am happy to stand for questions.

Kathy M. Sachs  
Deputy Assistant Secretary of State  
Administrative and E-Government Services

## TESTIMONY

By

Mark McGilley, Service Corporation International

HB 2240

House Committee on Local Government

Monday, February 21, 2011

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Mr. Chairman, 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 2240. 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 want to begin by commending the Secretary of State and his staff, only a few weeks after taking office, for quickly focusing and working diligently to address this very important issue and for allowing the interested parties to participate. House Bill 2240 represents a rewrite of the cemetery merchandise and perpetual care statutes. The changes in the bill will provide more protection to Kansas consumers who choose to plan ahead for their end of life needs. Further, it allows the Secretary of State to ensure compliance with the cemetery trusting laws while not being so burdensome for individual cemeteries that it hinders their ability to operate.

We would offer one amendment to the bill which I have included in balloon amendments attached to my testimony.

The amendment (reflected on page 5 of HB 2240) would allow the trustee of the merchandise trust fund to allocate distributable earnings to all preneed cemetery merchandise, preneed burial products or services on a regular basis throughout the year. This would ensure that the individual accounts are up to date and accurate, and that the appropriate funds are withdrawn at the time of need. The trustee would report these distributions on a quarterly basis to the Secretary of State. We worked with the Secretary of State's staff on this issue and have reached consensus on this language.

In addition to this amendment I would like to address one additional issue. During last year's working group the parties agreed that thorough auditing of cemetery trusts is essential to protect Kansas consumers. At that time the Secretary of State received very little funding to conduct these audits and all parties agreed that an administrative fee to provide the resources for auditing would be appropriate. The Secretary of State's staff established a \$20 fee last summer that would be charged on each preneed cemetery contract and each burial space to fund enhanced audits and began collecting the fee on January 1, 2011. We are supportive of fee funded audits but we do believe that a cap on such fees is appropriate. The final version of this proposal in the 2010 legislative session would have capped the fee authority at \$25 per contract or burial space. We believe that a \$25 cap allows for sufficient funding for the needed audits and provides flexibility for the Secretary of State for increased funding in future years. We hope to reach an agreement on the appropriate language as this bill moves through the process.

Once again I want to express my gratitude to the staff of the Secretary of State's office for their effort on this very important issue. This bill will provide additional protection to citizens throughout the State of Kansas. Mr. Chairman, thank you for this opportunity to present testimony and I am happy to answer questions at the appropriate time.



~~paid to or withdrawn by the cemetery corporation and the cemetery corporation shall continue or shall resume, as the case may be, making the deposits required by subsection (c) of this section.~~

(f) Within 30 days following the end of each quarter, the trustee shall provide the secretary of state a report of all deposits to and distributions from the cemetery merchandise trust fund. The report shall be in a form and manner approved by the secretary of state and shall include the total amount of the deposits, distributions and the name and contact information of the trust officer in charge of the account.

(g) At least annually, as of December 31, the trustee of the merchandise trust fund shall allocate the distributable earnings to all preneed cemetery merchandise, preneed burial products or services for which funds are then held in a cemetery merchandise trust fund. The trustee may, at the request of the cemetery, allocate the distributable earnings ~~quarterly~~ on December 31, March 31, June 30 and September 30 of each year. ~~The trustee shall report to the secretary of state the calculation of the distributable earnings within 30 days of the allocation, in a form and manner approved by the secretary of state.~~

(h) The cemetery corporation shall provide the secretary of state a copy of all trust instruments. The cemetery corporation shall obtain prior written approval from the secretary of state before the trust instrument shall be terminated, transferred or amended. The cemetery corporation shall provide the secretary of state copies of any amendments to the trust instrument before the amendments shall become effective.

Sec. 6. K.S.A. 16-322 is hereby amended to read as follows: 16-322.

(a) ~~The cemetery corporation shall establish and maintain a cemetery merchandise trust fund must be maintained with a bank, trust company or savings and loan association having trust powers, with a trustee as defined in K.S.A. 16-320, and amendments thereto. A copy of each contract or a written notice containing all relevant information regarding such prepaid merchandise contract for which deposits are made shall be furnished financial institutions. The institutions shall serve as trustees for the purposes of this act. The trustee may appoint one or more agents to provide administrative or investment advisory services, provided the trustee shall not assign or delegate the liability and fiduciary responsibilities owed to the cemetery merchandise trust fund to another financial institution or agent. Nothing in this act shall prohibit a trustee, as defined in K.S.A. 16-320, and amendments thereto, from entering into a co-trustee relationship with another trustee, who would not independently satisfy the requirements of that section provided the co-trustee: (1) Is authorized to do business in Kansas; and (2) submits personally to the jurisdiction of the courts of this state. Under no~~

## PROPOSED AMENDMENT

John C. Peterson, SCI

on a regular basis more often than annually and in which case the calculation of the distributable earnings shall be filed quarterly

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To: House Committee on Local Government

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: HB 2240: Cemetery Merchandise Contracts and Trust Funds**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present testimony today in support of **HB 2240** which provides guidance on cemetery merchandise trust funds and permanent maintenance funds. I am here today on behalf of the Kansas Bankers Association and the Kansas Bankers Association Trust Division.

We greatly appreciate the working relationship we have had with the Secretary of State's office in addressing the needs and suggestions our industry had with regard to the bill draft.

Of importance to our industry is that current law regarding who a "trustee" for these funds can be is retained. **HB 2240** does so by allowing a Kansas chartered financial institution, a Kansas trust company or a federally chartered institution with a physical presence in Kansas to serve as a trustee. We believe this is not only important policy for our industry, but is good public policy for the state as it seeks to exercise regulatory authority over the management of these funds.

The bill also specifically allows a trustee to contract with another institution to help with the management and investment of these funds. The requirements for holding cemetery trust funds are very unique, and such a provision allows a trustee to utilize a more sophisticated institution for the management of such funds when the trustee so desires. The bill is consistent with the Uniform Trust Code, in stating that in such a relationship, the trustee does not contract away its fiduciary liability to the owner of the funds.

Thank you for the opportunity to express our support for **HB 2240**, and we respectfully request that the Committee act favorably on its passage.