WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED
Committee Substitute for
SENATE BILL NO. 46

(By Senator

PASSED April 6, 1989
In Effect 60 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 46

(SENATOR TUCKER, MR. PRESIDENT, (BY REQUEST),
orignal sponsor)

[Passed April 6, 1989; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article five-a of said chapter, all relating to permitting trustees of permanent endowment funds for cemetery associations to receive negotiable, reasonable compensation for their services; permitting nonresident trust companies and banks to serve as trustees for permanent endowment care funds; providing that secretary of state accepts service of process on behalf of such nonresident trustees; and bond.

Be it enacted by the Legislature of West Virginia:

That section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article five-a of said chapter be amended and reenacted, all to read as follows:
ARTICLE 5. CEMETERIES.

§35-5-5. Permanent endowment funds for cemetery associations — Trustee therefor; appointment; bond; compensation; vacancy.

1 The board of directors of any such cemetery association shall appoint a trustee, who shall be a responsible businessman or some solvent federally insured banking institution, to act as such trustee for a period of two years, or until his, or its, successor is appointed.
2 Such trustee shall be known as the trustee of the permanent endowment fund of such cemetery association, and shall immediately upon his, or its, appointment and acceptance of the trust, give bond to the said cemetery association, with some solvent and reliable bonding company authorized to do business in this state, in a sum equal to the amount which may come into the hands of such trustee, which bond shall be increased or diminished from time to time so as always to equal at least the amount of the trust funds in the hands of such trustee; and the premium upon such bond shall be paid out of the income of the trust funds in the trustee’s hands and as part of the cost of the administration of the trust fund. No trustee appointed under this section shall enter upon the discharge of his, or its, duties until such bond is given and approved by the board of directors of such cemetery association: Provided, That if the trustee so appointed by any such cemetery association be a federally insured banking institution authorized and qualified to exercise trust powers under and subject to the provisions of article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, it shall not be required to give the bond hereinbefore provided, excepting and unless required by the provisions of section eighteen, article four, chapter thirty-one-a of said code. The board of directors of such cemetery association shall allow such trustee, for service as such, a negotiable, reasonable fee to be paid from such trust funds. In the event of a vacancy in such trusteeship, or failure of the board of directors of any such cemetery association to
appoint such trustee, after being requested so to do by
any stockholder of any such cemetery association, or
its successor, or any citizen interested, application may
be made to the circuit court of the county wherein
such cemetery association is located, and it shall be the
duty of the circuit court of such county to appoint a
trustee, who, when so appointed and qualified, shall
have all the powers and perform all the duties of such
trustee as provided in this section.

ARTICLE 5A. PERPETUAL CARE OF AND TRUST FUNDS FOR
CEMETORIES.

§35-5A-5. Trustee of the permanent endowment care funds.

The trustee of the permanent endowment care fund
shall be a federally insured trust company or a
federally insured banking institution with fiduciary
powers authorized and qualified to exercise trust
powers under and subject to the provisions of article
four, chapter thirty-one-a of this code, or of the
corresponding law of another state. A nonresident
federally insured trust company or nonresident feder-
ally insured banking institution so authorized and
qualified may become a trustee of a permanent
endowment care fund notwithstanding the provision
of section seven, article eight-a, chapter thirty-one-a of
this code. When a nonresident trust company or
nonresident banking institution becomes a trustee of a
permanent endowment care fund for a perpetual care
cemetery in this state, said nonresident trust company
or nonresident banking institution thereby constitutes
the secretary of state as its true and lawful attorney-
in-fact upon whom service of notice and process in any
action or proceeding against it as trustee, and accep-
tance of such trust by said nonresident trust company
or nonresident banking institution shall be a manifes-
tation of agreement that any notice or process, which
is served in the manner hereinafter provided in this
section, shall be of the same legal force and validity as
though such nonresident trust company or nonresi-
dent banking institution was personally served with
notice and process within this state. Service of such
notice and process and the manner of acceptance of
the same by the secretary of state shall be in accordance with the provisions of section fifteen, article one, chapter thirty-one of this code.

Any nonresident trust company or nonresident banking institution appointed as trustee of a permanent endowment care fund shall immediately upon acceptance of the trust give bond in accordance with the provisions of section five, article five, chapter thirty-five of this code.

The trustee shall invest such permanent endowment care funds for the purpose of providing an income to be used for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records, statuary, and other real and personal property of the cemetery, and shall acquire, invest, reinvest, exchange, retain, sell and manage all property now or hereafter coming into such trustee's care or control.

The trustee shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence, exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

Within the limitations of the foregoing standard, any such trustee is authorized to acquire and retain without any order of any court, every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account.

The trustee shall prepare an annual report of all of the assets and investments of the permanent endowment care fund. One copy shall be maintained at the office of the cemetery and shall be available for inspection at reasonable times by owners of interment rights in the cemetery.
The trustee shall pay over to the cemetery all income derived from the permanent endowment care fund semiannually to be expended only for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records, statuary and other real and personal property of the cemetery.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within........ approved........this the........day of........April........1889.

Governor