

CEMETERY MONEY

Phone: (517) 373-8080
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House Bill 4849 as introduced
Sponsor: Rep. Julie Alexander
Committee: Local Government
Complete to 9-18-17

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

HB 4849 would amend 1903 PA 81 ("An act to provide for the care and preservation of cemetery lots") to change the manner in which "cemetery money"—that is, money deposited with a county treasurer for cemetery lot care—is collected, invested, and disbursed. It would end the future deposit of cemetery money with county treasurers. It would introduce a process for a county treasurer to transfer money to a relevant cemetery operator or cemetery fund, or to certify as abandoned the legal right and interest in the deposited money and transfer the money to the county's general fund. The bill would also update language and references within the act.

The bill has two enacting sections:

Enacting section 1 would repeal section 4 of the act, which required county treasurers to record certain information upon receiving a deposit under the act.

Enacting Section 2 reads: "Section 9 of 1903 PA 81, as added by this [proposed bill], is intended by the legislature to advance the significant and legitimate public purpose of ensuring the availability and productive use of money deposited with a county treasurer for the purpose of maintaining cemetery lots and providing security in rights consistent with the health, safety, and welfare of the people of this state."

MCL 128.82 et al.

SUMMARY:

Currently under the act, an individual may deposit any amount of money greater than \$50.00 with a county treasurer for the purposes of caring for specific cemetery lots in Michigan. Only the interest can be used for such care. The treasurer must create receipts stating the amount received, the name of depositor, and a full description of the lot or lots for which the money will be used.

Also under the act, the county has the first privilege to borrow this deposited money, and may use the funds for investment, with the approval of the finance committee of the board of supervisors. If the treasurer uses money to make a loan, the interest received must be paid to the person in charge (or, if applicable, the "sexton") of the designated cemetery where the lots are located. Finally, the bond of a county treasurer is required to hold funds under the act, and the treasurer must make an annual report to the board of supervisors.

HB 4849 would make the following changes to these provisions:

- End the deposit of cemetery money with county treasurers after June 30, 2017
- Remove the borrowing privilege and investment approval requirement. Instead, county treasurers could invest the money in the same manner as county money is treated under 1943 PA 20, which regulates the investment of surplus funds of public corporations.
- Require the transfer of earnings on the above investments to the cemetery owners or operators in which the designated lots are located.
- Update references to the bond requirements for a county treasurer and update annual reporting references.

The bill would create a new section of the act, section 9. This would regulate the disbursement of existing cemetery money.

After June 30, 2017, a county treasurer holding cemetery money for a lot would be able to transfer the money to any of the following, to be held, invested, and expended for the care of the lot or cemetery where the lot is located:

- The cemetery owner or operator.
- An irrevocable endowment and perpetual care trust fund, or other trust fund created under the Cemetery Regulation Act.
- A trust fund created under 1909 PA 95 ("Trust Fund For Care of Cemeteries").
- A perpetual care and maintenance fund created under 1937 PA 215 ("Cemetery or Burial Grounds").
- An irrevocable endowment and perpetual care fund established under 1937 PA 215.

After June 30, 2017, if a treasurer were unable to identify the location of a cemetery or a cemetery lot for which money was originally deposited, and certain criteria are met, the treasurer could to transfer the money deposited and any earnings to the county general fund. The treasurer could do this only after certifying as abandoned the legal interest or rights in money deposited, or in the use of money deposited for the purpose of cemetery care.

A person or an estate possessing a legal interest or right in money deposited, or in the use of money deposited for the purpose of cemetery care would be presumed to have abandoned the legal interest or right if one or more of the following apply:

- The cemetery described at the time of deposit does not exist, or cannot be located by the county treasurer.
- The lot described at the time of deposit does not exist, or cannot be located by the county treasurer.
- The description of the cemetery lot for which money was deposited was inaccurate, and the lot cannot be located.
- The number of the cemetery lot for which money was deposited does not exist, or the location cannot be identified based on the number provided.
- Money was deposited for caring for a lot in an unplatted cemetery, and the cemetery does not contain the remains of that person or the remains cannot be identified.

If legal interest or right is presumed to be abandoned based on the criteria above, and if the county treasurer seeks to certify the abandonment, he or she would be required to do the following:

- Publish a notice of intent to certify as abandoned the legal interest or right in money deposited or in the use of money deposited. The notice must be published for two consecutive weeks in a general circulation newspaper in the county in which the money was deposited. A notice must include:
 - The information related to the cemetery lot provided to the county treasurer at the time of deposit.
 - A statement indicating that the lot cannot be located.
 - Contact information for the office of the county treasurer.
 - A request that persons with a legal interest or right in the deposited money or with information regarding the location of the cemetery lot contact the office of the county treasurer.
 - A statement indicating that the money deposited will be transferred to the county general fund if the lot cannot be located and the legal interests and rights are certified as abandoned.
- The notice must also appear on the county treasurer's website for at least 90 consecutive days.
- If the treasurer identified the location of a cemetery designated by a deposit, the treasurer must send a notice to the owner or operator of the cemetery notifying the owner of the legal interest or right presumed to be abandoned, and any information that was provided to the treasurer at the time of the deposit. The owner or operator is required to respond within 90 days if the lot can be identified. The owner or operator must attempt to identify the lot, and if the lot is identified, the owner or operator must notify the treasurer. If the treasurer is notified that the lot is identified, the treasurer may not certify a legal right or interest as abandoned.

The county treasurer would be able to certify as abandoned the legal interests and rights in money deposited or in the use of money deposited if 120 days have passed after the above notice and the treasurer is still unable to identify the location of the cemetery lot. The treasurer would be required to retain a record of this certification in the treasurer's office.

FISCAL IMPACT:

House Bill 4849 would have no fiscal impact on the state and an indeterminate fiscal impact on local units of government.

A general fiscal impact for local units of government is difficult to determine because the bill is permissive in nature. However, the provisions of the bill prohibit additional funds for cemetery care from being accepted, and because there are ongoing costs associated with administration, accounting, and bonding, it is likely that county treasurers will generally stop administering cemetery funds. While the fiscal impact for any county is likely to be minimal based on the general size and scope of the cemetery funds under administration, county treasurers would realize reduced costs and counties could realize a

one-time increase in revenues if any deposited cemetery funds were considered abandoned.

More specifically, county treasurers would realize reduced or eliminated costs associated with administering the cemetery funds (including annual accounting costs) and reduced or eliminated costs associated with obtaining a bond for the handling of cemetery funds. If a county treasurer pursued abandoned funds, the county treasurer would incur minimal costs associated with the necessary notice requirements. If funds were deemed abandoned, a county's general fund would realize a one-time revenue increase in the amount of the abandoned funds.

Legislative Analyst: Patrick Morris
Fiscal Analyst: Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.