

## ACQUISITION OF ABANDONED CEMETERIES

**House Bill 5838 as introduced**  
**Sponsor: Rep. Judith Scranton**

**House Bills 5839 and 5905 as introduced**  
**Sponsor: Rep. Andrew Richner**

**Committee: Regulatory Affairs**  
**First Analysis (6-16-98)**

### ***THE APPARENT PROBLEM:***

Current law provides a mechanism by which townships, cities, or villages can petition a circuit court to order that cemeteries found to be neglected, abandoned, impeding the growth of a municipality, or posing a public health threat be vacated (that human remains be removed). However, there is no mechanism by which a municipality can take over the ownership or maintenance of a cemetery, even if the cemetery has been abandoned. Though laws regulating the cemetery industry require a certain percent of revenue generated to be put into trust for the upkeep and maintenance of the cemetery, reportedly, there have been several instances of cemetery owners declaring bankruptcy in the last few years. In those cases, the escrowed funds have often previously been raided, leaving no funds for the upkeep of the cemetery grounds, which quickly fall into disrepair. Some people feel that the laws should be amended to allow local municipalities the option of either vacating or acquiring and maintaining those cemeteries deemed to be abandoned.

### ***THE CONTENT OF THE BILL:***

The bills would amend various acts to allow cities, villages, and townships to acquire and maintain abandoned cemeteries if the trustees or council members chose to do so. Specifically, the bills would do the following:

Current law provides that a circuit court must order a cemetery to be vacated (the removal of human remains) in whole or in part if a village or city determines by resolution that the cemetery has become commons, neglected or abandoned, become a public nuisance, impedes the growth of the city or village, or presents a public health danger. House Bill 5838 would amend Public Act 164 of 1871 (MCL 128.41

and 128.43) to allow cities and villages to either vacate a cemetery or, in the case of an abandoned cemetery, to acquire and maintain it. The bill would require the township to arrange for the long-term maintenance and upkeep of the cemetery. (Note: Though the bill refers to townships, the act applies to cities and villages. A separate act, Public Act 113 of 1995, exempts private cemeteries and cemeteries owned by villages and cities from the cemeteries that townships are required to maintain. The act also specifies that a township board may contribute to the care and maintenance of a cemetery owned by a city or village, and vice versa.) The bill would also update the act by deleting and rewriting archaic language.

House Bill 5839 would amend Public Act 297 of 1929 (MCL 128.51, 128.52, and 128.55), which provides for a city or village to petition a court to order a cemetery vacated if the cemetery impedes the establishment, maintenance, development or enhancement of a public improvement. Currently, the act requires, among other things, the city or village to contract with the board of directors or trustees of a cemetery association for the purchase of the cemetery and for proper removal and re-interment of the bodies. The bill would amend the act to add that in the case of an abandoned cemetery, the cemetery should be vacated or acquired and maintained by the city or village. If the city or village acquired a cemetery, the contract would have to specify that the village or city would maintain the cemetery. Further, the bill would delete a provision requiring that the contract be approved by a three-quarters vote of the stockholders of the cemetery association, and would update archaic language.

House Bill 5905. Public Act 49 of 1895 provides that when a township board of trustees receives a written complaint signed by ten residents that a privately

owned cemetery has become commons, neglected or abandoned, become a public nuisance, impedes the growth of a city or village in the township, or presents a public health danger, the township board must immediately start proceedings to vacate the cemetery as provided in the act. The proceedings include requiring the board of trustees to file a petition in circuit court within 30 days after the complaint is received (or a freeholder resident of the township can file the petition). If the evidence supports that the cemetery should be vacated for any of the reasons stated above, the court has to order that the cemetery be vacated as a burial place in whole or in part as prescribed in the act.

The bill would amend Public Act 49 (MCL 128.31, 128.33, and 128.34) to specify instead that the township could begin proceedings to vacate or acquire and maintain a privately owned cemetery either after receiving a petition signed by ten residents or upon passage of a township resolution that supported the fact that the cemetery was abandoned. Proceedings to vacate or acquire and maintain a cemetery could also be made if the cemetery had become commons, neglected or abandoned, became a public nuisance, impeded the growth of a city or village in the township, or presented a public health danger. The current provision pertaining to the township filing a petition in circuit court would remain the same. The circuit court would have to order that the cemetery either be vacated or acquired and maintained if it determined that the evidence supported such a determination. If a township acquired a cemetery, the township would have to arrange for the long-term maintenance and upkeep of it. The bill would also update the act by deleting and rewriting archaic language.

### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, the bills have no fiscal implications for the state, but could raise local costs in an indeterminate amount if local governments choose to acquire and maintain abandoned cemeteries. (6-15-98)

### **ARGUMENTS:**

#### **For:**

Current law already allows a municipality to get a court order authorizing it to remove the bodies from a cemetery under a variety of circumstances, including if the cemetery has been abandoned. The bills would simply give a municipality the option, in the case of an abandoned cemetery, of whether to have the bodies

moved or whether to acquire the cemetery and take over the maintenance of it.

#### **Response:**

House Bills 5838 and 5839, which regulate cities and villages, would merely give a municipality such a choice. House Bill 5905, though, might lead to a court ordering the acquisition of a cemetery by a township contrary to the township's wishes. In the first two bills, it is the trustees or council members who petition the court to order the vacation or acquisition of a cemetery. However, Public Act 297 of 1929, which House Bill 5905 would amend, would allow either the trustees or council members in response to a township resolution or to a citizens' petition, or any resident of the township (if the township fails to petition the court within 30 days of receiving the citizen petition) to petition the circuit court to order a cemetery to be vacated or acquired. Some are concerned that such a provision has potential "Headlee" implications, i.e., is an unfunded state mandate. Therefore, the bill should be amended to clarify that a court order to acquire and maintain a cemetery should only be granted in those cases where it is the township bringing the petition. In this way, the laws pertaining to cities, villages, and townships would be consistent.

#### **POSITIONS:**

The Michigan Municipal League supports House Bills 5838 and 5839. (6-12-98)

The Michigan Township Association opposes House Bill 5905 as written. (6-12-98)

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