

# HOUSE BILL No. 5905

June 3, 1998, Introduced by Rep. Richner and referred to the Committee on Regulatory Affairs.

A bill to amend 1895 PA 49, entitled  
"An act to provide for vacating cemeteries in townships,"  
by amending the title and sections 1, 3, and 4 (MCL 128.31,  
128.33, and 128.34), sections 1 and 4 as amended by 1980 PA 367.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

### TITLE

2       An act to provide for THE ACQUISITION OR vacating OF PRIVATE  
3 cemeteries ~~in~~ BY townships.

4       Sec. 1. (1) ~~When a complaint is made in writing to the~~  
5 THE board of trustees of a township ~~in this state~~ MAY, BY PETI-  
6 TION MADE by 10 or more residents of the township ~~,~~ OR BY RESO-  
7 LUTION ADOPTED BY THAT BOARD setting forth ~~the fact~~ FACTS SUP-  
8 PORTING THE ALLEGATION, DETERMINE that a private cemetery IS  
9 ABANDONED within the bounds of the township AND should be  
10 ~~removed for the reason that the~~ VACATED OR ACQUIRED AND

1 MAINTAINED BY THE TOWNSHIP. THE TOWNSHIP MAY INSTITUTE  
2 PROCEEDINGS TO VACATE OR ACQUIRE AND MAINTAIN A CEMETERY FOR ANY  
3 OR ALL OF THE FOLLOWING REASONS:

4 (A) THE cemetery has become commons. ~~—,~~

5 (B) THE CEMETERY has become neglected or abandoned by its  
6 owner or owners. ~~—,~~

7 (C) THE CEMETERY has become a public nuisance. ~~—, or shall~~  
8 ~~impede—~~

9 (D) THE CEMETERY IS IMPEDING the growth of a city or village  
10 in the township. ~~—, or when a private cemetery endangers—~~

11 (E) THE CEMETERY MAY ENDANGER the health of the people  
12 living in the immediate vicinity of the private cemetery. ~~—, the~~  
13 ~~township board of trustees immediately shall institute proceed-~~  
14 ~~ings to vacate the cemetery in the manner provided in this act.—~~

15 (2) The circuit court for the county in which the cemetery  
16 is located may ~~vacate~~ ORDER THE VACATION OR ACQUISITION AND  
17 MAINTENANCE BY THE TOWNSHIP OF the private cemetery, or a part of  
18 the private cemetery, on petition made to the court as provided  
19 in this act.

20 Sec. 3. (1) ~~That the~~ THE FOLLOWING APPLY TO A hearing on  
21 ~~such~~ A petition FILED UNDER SECTION 1:

22 (A) IT may be continued from term to term, in the discretion  
23 of the court, without further notice. ~~—; that all—~~

24 (B) ALL testimony may be taken in open court. ~~—, or the~~  
25 ~~taking of the same may be referred, in the discretion of the~~  
26 ~~court, to a circuit court commissioner of the proper county;~~  
27 ~~that, under—~~

1 (C) IN the discretion of the court, proper issues may be  
2 made for the determination of all questions of law and fact, and  
3 all questions of compensation to any person ~~or persons to be~~  
4 affected by ~~such~~ THE proceedings ~~,~~ and all questions  
5 ~~touching~~ CONCERNING the compensation to be paid by the person  
6 ~~or persons~~ to whom ~~said~~ THE premises or any part ~~thereof~~  
7 ~~shall be~~ OF THE PREMISES ARE sold after ~~the same shall have~~  
8 ~~been vacated as such cemetery, and all~~ VACATION.

9 (D) ALL issues of fact may be tried by a jury. ~~,~~ ~~or 3 com-~~  
10 ~~missioners, if the court shall so order, and any~~

11 (E) ANY person adversely ~~interested~~ AFFECTED may ~~cause~~  
12 ~~himself to~~ be made A defendant to ~~such~~ THE petition. ~~In all~~  
13 ~~cases where reference shall be made to a jury or commissioners to~~  
14 ~~determine the compensation to be paid to or by any persons as~~  
15 ~~aforesaid, the proceedings upon such reference, shall, so far as~~  
16 ~~practicable, be like those had in cases where a jury is impaneled~~  
17 ~~or commissioners are selected, to ascertain and determine the~~  
18 ~~necessity of taking lands, franchises, and other property for the~~  
19 ~~construction of railroads, and to appraise the damages and com-~~  
20 ~~pensation to be allowed therefor. If upon~~

21 (2) AT THE hearing, ~~such~~ THE petitioner shall produce sat-  
22 isfactory evidence to the court that the notice required by this  
23 act has been given ~~,~~ and ~~that such~~ IF THE COURT DETERMINES  
24 THAT THE cemetery should be vacated in whole or in part ~~,~~ as a  
25 place of burial ~~,~~ OR IF THE COURT DETERMINES THAT THE TOWNSHIP  
26 SHOULD ACQUIRE AND MAINTAIN THE CEMETERY for any of the reasons  
27 given in ~~this act~~ SECTION 1 for vacating OR ACQUIRING

1 cemeteries, ~~such~~ THE court shall ~~thereupon~~ order that such  
2 cemetery ~~shall~~ be vacated OR ACQUIRED AND MAINTAINED, in whole  
3 or in part. ~~, as a place of burial. That~~

4 (3) THE PETITIONER SHALL RECORD a copy of such order ~~, cer-~~  
5 ~~tified by the register of such court under his seal, shall be~~  
6 ~~recorded by the petitioners~~ ISSUED UNDER SUBSECTION (2) in the  
7 office of the register of deeds of the ~~proper~~ county IN WHICH  
8 THE CEMETERY IS LOCATED.

9 Sec. 4. (1) When a cemetery is vacated as provided in this  
10 act, the township board of trustees shall cause all the dead  
11 bodies and remains buried in the cemetery to be reinterred in the  
12 cemetery of the township, if it has a cemetery, and if not, then  
13 in some suitable cemetery in an adjoining township, in a prudent,  
14 careful, and respectful manner ~~,~~ and shall cause to be removed  
15 and again erected over the proper remains, permanent fences  
16 around graves and lots, tombstones, and monuments, with as little  
17 injury AS possible. If the cemetery vacated belongs to a reli-  
18 gious society or church ~~,~~ and another suitable cemetery belong-  
19 ing to the same church or denominational society exists within  
20 the township or an adjoining township, then the removal may be  
21 made to that cemetery instead of to the township cemetery. A  
22 removal of bodies and remains shall not be made during June,  
23 July, August, or September, except in the Upper Peninsula.

24 (2) IN THE CASE OF THE ACQUISITION OF A CEMETERY, THE TOWN-  
25 SHIP SHALL ARRANGE FOR THE LONG-TERM MAINTENANCE AND UPKEEP OF  
26 THE CEMETERY.

1       (3) ~~-(2)-~~ The removal and the cost of the proceedings under  
2 this act shall be at the expense of, and paid by, the township in  
3 which the cemetery is situated. If the proceeding is instituted  
4 by an individual ~~—,~~ without the consent of the township board of  
5 trustees ~~—,~~ and the petition is denied by the court, the person  
6 instituting the proceeding shall ~~be required to~~ pay the costs  
7 allowed by order of the circuit court.