

Legislative Analysis



CREMATORIUM: ALLOW MORTGAGE OR LIEN

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4456 (Substitute H-2)

Sponsor: Rep. Hugh Crawford

Committee: Regulatory Reform

First Analysis (4-22-11)

BRIEF SUMMARY: The bill would allow a mortgage, lien, or other encumbrance to be executed upon the lands or buildings of a crematorium if a cash bond and surety bond were filed with the cemetery commissioner; require the duration of a lease to be five years; and repeal Section 4 of Public Act 58 of 1915.

FISCAL IMPACT: The bill would have no apparent fiscal impact.

THE APPARENT PROBLEM:

Under a law that dates from 1915, the lands and buildings of either a crematorium or columbarium must be owned outright – the land or buildings cannot be mortgaged, rented, or otherwise encumbered. A crematorium is the furnace or establishment used for cremating the dead. A columbarium is a building with niches for urns that hold the ashes of the dead.

Reportedly, at least one businessman rented a warehouse in a light industrial park and invested in improvements to the facility with the intention of operating a crematorium for both pets and humans. (Different furnaces must be used). After getting all the necessary state and local permits to open the crematorium, the owners were denied a license to perform human cremations based on the old law prohibiting leases on such facilities.

Considering the siting requirements for locating a crematorium (away from populated neighborhoods), and the cost involved in outfitting a building to perform cremations, it is not always possible for a new corporation to buy land or buildings outright. Thus, some feel the old law needs to be updated.

THE CONTENT OF THE BILL:

The bill would allow a mortgage, lien, or other encumbrance to be executed upon the lands or buildings of a crematorium if a cash bond and surety bond were filed with the cemetery commissioner; require the duration of a lease to be five years; and repeal Section 4 of Public Act 58 of 1915.

Under a 1915 law, a corporation can be formed to provide for the disposal by cremation of the bodies of the dead. The corporation may purchase land for a crematorium, columbarium, or both. A crematorium is the furnace or establishment used for cremating

the dead. A columbarium is a building with niches for urns that hold the ashes of the dead.

Section 4 of the act grants a corporation power to acquire by gift, devise, or purchase, and hold in fee simple, land as may be necessary and appropriate for its purposes provided that any land held by the corporation is not in any way encumbered (for instance, by having a mortgage or by leasing). Section 6 prohibits a mortgage or other lien or encumbrance from being executed upon the lands or buildings of the corporation that are actually used for the disposal of the dead. Together, these sections have been interpreted to prevent the acquisition of a crematorium or columbarium by lease agreement or mortgage.

House Bill 4456 would amend Public Act 58 of 1915 to repeal Section 4 (described above), move the language from Section 4 to Section 6 pertaining to a corporation having the power to acquire the land necessary and appropriate for its purposes, and revise Section 6 to allow encumbrances only on the lands and buildings associated with a crematorium under conditions specified in the bill.

Currently, Section 6 specifies that no mortgage or other lien or encumbrance shall be executed upon the lands or buildings of the corporation actually used for the disposal of the dead. This language would be deleted.

Instead, Section 6 would specify that a corporation would have the power to acquire by gift, devise, or purchase, and hold in fee simple, land that is necessary and appropriate for its purposes (formerly in Section 4). A mortgage or other lien or encumbrance could not be executed upon the lands or buildings of a columbarium.

In addition, the bill would specifically allow a mortgage or other lien or encumbrance to be executed on the land or buildings that are not under or part of a columbarium if, and only if, the corporation, landlord, mortgagee, or lender, as determined by the cemetery commissioner, filed and maintained in force a corporate surety bond and a cash bond conditioned upon the faithful performance of all cremations and dispositions of cremated remains contracted for, by, or on behalf of the corporation that owns the crematorium.

The surety bond and cash bond amounts would be set by the cemetery commissioner, but the sum total of both bonds would have to be at least \$100,000. The bonds would be subject to departmental rules and regulations promulgated under the Cemetery Regulation Act and to the regulation of crematoriums under that act.

The surety bond and cash bond would be for the benefit of the state to ensure the performance of the cremation and disposition of cremated remains contracted for, by, or on behalf of the corporation that owned the crematorium. If land or buildings were leased under the bill's provisions, the duration of the lease would have to be for five years.

MCL 456.206

ARGUMENTS:

For:

Under the bill, a mortgage or other lien or encumbrance could be executed upon the lands or buildings of a crematorium. Currently, this is not allowed.

Reportedly, about 34 percent of people are cremated instead of being buried. This number is expected to rise over the next few decades. With the need for operational crematoria rising, some feel the old law needs to be updated to accommodate today's business practices; for example, that start-up costs often require the leasing or financing of a facility appropriate for a crematorium. Requiring that a lease be for five years will encourage only those serious about the business to begin operations. The surety bonds required for a lease or mortgage would ensure that a pool of money would be available to properly dispose of any remains should a crematorium go out of business or be shut down due to violations.

The bill would retain the current ban on encumbrances on columbaria or the land on which a columbarium is located.

Response:

The bill requires that if land or buildings for a crematorium are acquired by lease, the duration of the lease be for five years. This would prevent businesses from negotiating longer leases. Since the provision appears to be intended to prevent fly-by-night operations from setting up for brief periods and taking money from clients without performing the cremations or properly disposing of the remains, the provision should be amended to require leases to be at least five years in duration. The change in terminology would be more conducive in encouraging legitimate operations to locate in the state for longer periods of time by giving more flexibility in negotiating lease contracts.

POSITIONS:

A representative of the Michigan Cemetery Association testified in support of the bill. (4-13-11)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

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