

Legislative Analysis



CREMATORIUM: ALLOW MORTGAGE OR LIEN

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House Bill 4456 as enrolled

Public Act 112 of 2011

Sponsor: Rep. Hugh Crawford

House Committee: Regulatory Reform

Senate Committee: Regulatory Reform

Second Analysis (7-28-11)

BRIEF SUMMARY: The bill allows a mortgage, lien, or other encumbrance (such as a lease) to be executed upon the lands or buildings of a crematorium if a cash bond and surety bond are filed with the cemetery commissioner; require the duration of a lease to be at least five years.

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 for each.) 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 to accommodate operations using leased properties.

THE CONTENT OF THE BILL:

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.

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 amended 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 has the power to acquire 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 specifically allows 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 files and maintains 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 sum total of the surety bond and cash bond amounts must be at least \$100,000.

The surety bond and cash bond is 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 are leased under the bill's provisions, the duration of the lease must be for not less than 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 at least five years will encourage only those serious about the business to begin operations and would deter 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 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 (buildings in which cremated remains are housed) or the land on which a columbarium is located.

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