

Legislative Analysis



CEMETERY MONEY

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House Bill 4849 reported from committee as (H-1)

Sponsor: Rep. Julie Alexander

Committee: Local Government

Complete to 10-10-17

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

(Enacted as Public Act 8 of 2018)

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, and introduce a process for county treasurers to transfer money to a relevant cemetery operator or fund, or to certify the money as abandoned and transfer to the county's general fund.

The bill would take effect 90 days after being enacted into law.

MCL 128.82 et al.

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. The following table represents current counties that operate cemetery funds and their current outstanding balances.

County	Balance of Fund	County	Balance of Fund
Kalamazoo	\$2,462	Jackson	\$3,029
Oakland	2,000	Kalkaska	31,074
Kent	6,507	Ionia	268,003
Montcalm	36,000	Ottawa	5,890
Tuscola	6,800	St. Joseph	14,238

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.

THE APPARENT PROBLEM:

Many state laws regarding cemeteries were enacted over 100 years ago, and have rarely been updated. One such law, 1903 PA 81, allows individuals to deposit money with county treasurers for the care and preservation of specific cemetery lots. While certain county treasurers in Michigan still hold this money, it is often difficult to account for and track deposits that may have been made 100 years ago. It has been proposed that legislation be introduced to allow county treasurers to disburse this money and end the practice of cemetery deposits with county treasurers.

THE CONTENT OF THE BILL:

Currently under the act, an individual may deposit any amount of money greater than \$50 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, 2018.
- 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 section would regulate the disbursement of existing cemetery money.

After June 30, 2018, 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, 2018, 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 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.

The bill has two additional enacting sections. Enacting section 1 would repeal section 4 of the act, which requires county treasurers to record certain information upon receiving a deposit under the act. Enacting section 3 states that the legislative intent of the proposed bill is to ensure the productive use of cemetery money.

DISCUSSION:

According to testimony before the House Local Government Committee (9-20-17), the bill is intended to allow county treasurers to disburse outdated cemetery funds, and seek to deposit the funds with the appropriate heirs, relevant cemeteries, and existing cemetery care funds. Reportedly, while county treasurer cemetery funds still accept individual deposits, the practice has all but ended, and the upkeep and maintenance of cemeteries is no longer a core responsibility of the county treasurer.

According to information provided to the Committee, there are 10 counties in Michigan that currently hold cemetery funds. Of the 10 counties, the fund balances range from \$2,000 in Oakland County to \$268,003.26 in Ionia County. Six of the counties have a balance below \$10,000, so the amount of money in question is generally small. In some instances, the costs of accounting for the cemetery fund and processing interest payments exceed the benefit that the fund provides. Apparently, some county treasurers have made attempts to disburse the money, but find it difficult to trace deposits that were made decades ago; this bill provides a clear procedure to distribute the money.

The bill is permissive, allowing the 10 county treasurers to continue operating their cemetery fund if desired. Otherwise, according to proponents of the bill, county treasurers will work toward disbursing the money according to the bill's provisions, while at the same time simplifying their balance sheets for accounting purposes.

No individuals or groups expressed opposition to the bill.

POSITIONS:

Individuals from the following organizations testified in support of the bill:

- Michigan Association of County Treasurers (9-20-17)

Individuals from the following organizations indicated support of the bill:

- Michigan Association of Counties (9-20-17)

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.