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BILL



ANALYSIS

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House Bill 4849 (Substitute H-1 as passed by the House)  
Sponsor: Representative Julie Alexander  
House Committee: Local Government  
Senate Committee: Regulatory Reform

Date Completed: 12-13-17

### **CONTENT**

**The bill would amend Public Act 81 of 1903, which provides for the care and preservation of cemetery lots, to do the following:**

- **Prohibit money from being deposited with a county treasurer for the care of cemetery lots, after June 30, 2018.**
- **Delete provisions pertaining to the borrowing and investment of money deposited with a county treasurer for the care of a cemetery lot and, instead, require county treasurers to invest money in the same manner as allowed for the investment of surplus funds of public corporations.**
- **Require a county treasurer to transfer any earning on investments to a cemetery owner or operator.**
- **Require a county treasurer to report to the county board of commissioners on money deposited, invested, and paid.**
- **Permit a county treasurer to transfer money held for the care of a cemetery lot to the cemetery owner or operator, or to certain funds, to be held, invested, and spent for the care of the lot or the cemetery, after June 30, 2018.**
- **Establish a presumption that a legal interest or right in money deposited for the purpose of caring for a cemetery lot was abandoned, if certain conditions existed.**
- **Establish a process for a county treasurer to certify a legal right or interest as abandoned, if the presumption applied.**

**The bill also would repeal Section 4 of the Act, which requires every county treasurer in the State, upon receiving any cemetery money, to deliver to the person depositing the money a receipt stating the amount received, the full name of the person, and a full and accurate description of the lot or lots for which the money is intended to be used. The county treasurer also must make and deliver duplicates of the receipt to the county clerk and the township or city clerk of the township or city in which the cemetery is located.**

The bill would take effect 90 days after it was enacted.

#### **Money for Care of Cemetery Lots**

Section 1 of the Act allows any person residing in the State, or elsewhere, during his or her lifetime, by will, or otherwise, to deposit money with any county treasurer in the State for the

care of any cemetery lot. The amount deposited must be at least \$50, and the interest is to be used only for the purpose of caring for the lot or lots in any cemetery within State.

Under the bill, no money could be deposited with a county treasurer for that purpose after June 30, 2018.

#### Borrowing & Investing Cemetery Money

Under the Act, a county in which any money has been deposited for the care of a cemetery lot has the first privilege of borrowing the money, by paying interest at a rate of at least 3.0% per year. A county treasurer may consolidate the funds for investment, with the approval of the finance committee of the board of supervisors.

A county treasurer loaning the money must pay the interest received on the loan to the sexton, or whoever is in charge of the cemetery in which the lot or lots to be benefitted are located. Upon an order stating the amount of labor performed on the lot or lots properly described, reasonable compensation may be charged.

A bond of the county treasurer prescribed in Sections 2361 and 2362 of the Compiled Laws of 1915 (a blanket bond or a surety bond) must be holding for all funds deposited for the care of a cemetery lot. The bond must be increased from time to time as the funds increase, at the discretion of a board of supervisors.

Every county treasurer having funds for the care of a cemetery lot must make an annual report to the board of supervisors at its January session of the total amount of money deposited, how it was invested, and the amount of interest earned.

The bill would delete all of these provisions.

The bill would permit a county treasurer to invest money deposited with the county under Section 1 in the same manner as county money under Public Act 20 of 1943. (That Act permits public corporations, which include counties, to invest funds in certain debt instruments and investment vehicles.)

Each year, a county treasurer would have to transfer any earnings on investments to the cemetery owner or other operator of the cemetery in which the lot was located for the purpose of caring for the lot.

A bond covering a county treasurer as required by Sections 35 and 36 of Revised Statute 14 of 1846 (currently referred to in the Act as Sections 2361 and 2362 of the Compiled Laws of 1915), would have to be for the faithful and proper discharge of duties under Public Act 81 of 1903, including the holding of money deposited. The bond would have to be increased or decreased to reflect the amount of money held by a county treasurer, as determined by a county board of commissioners.

If a county treasurer held money for the care of a lot, by January 31 of each year, the treasurer would have to report to the county board of commissioners on money deposited, invested, and paid.

#### Transfer of Cemetery Money

The bill would add Section 9 to the Act to permit a county treasurer, after June 30, 2018, to transfer money held for the care of a cemetery lot to any of the following to be held, invested, and spent for the care of the lot or the cemetery in which the lot was located:

- The cemetery owner or operator of the cemetery in which the lot was located.
- An irrevocable endowment and perpetual care trust fund or other trust fund under the Cemetery Regulation Act authorized to care for the lot or the cemetery where it was located.
- A trust fund under the Home Rule Village Act authorized to care for the lot or the cemetery where it was located.
- A perpetual care and maintenance fund under Public Act 215 of 1937 (which authorizes municipalities to own or control cemetery or burial grounds) authorized to care for the cemetery in which the lot was located.
- An irrevocable endowment and perpetual care fund established under Public Act 215 of 1937 authorized to care for the lot or the cemetery in which the lot is located.

After June 30, 2018, if a county treasurer were unable to identify the location of a cemetery or a cemetery lot for which money was deposited, and the county treasurer certified as abandoned the legal interests or rights in money deposited with the county treasurer or in the use of money deposited for the purpose of caring for the cemetery lot (as described below), the county treasurer could transfer the money deposited and any earnings from the investment of the money to the county general fund.

#### Legal Interest or Right

The bill provides, in proposed Section 9, that 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 caring for a cemetery lot, or both, would be presumed to have abandoned the legal interest or right if one or more of the following applied:

- The cemetery described at the time money was deposited did not exist or the county treasurer could not locate it based on the information provided, or both.
- The lot described did not exist or the county treasurer could not locate it based on the description of the lot provided, or both.
- The description of the cemetery lot for which money was deposited was inaccurate and as a result the county treasurer could not locate the lot.
- The number of a cemetery lot for which money was deposited did not exist or the county treasurer could not identify the location of the lot could not be identified by the county treasurer based on the number provided, or both.
- Money was deposited for the purpose of caring for a cemetery lot in an unplatted cemetery containing the remains of an individual whose name was designated and the cemetery did not contain the remains of an individual with the name provided, or the location of the remains of the named individual could not be located within the cemetery identified, or both.

If a legal interest or right were presumed to be abandoned, and the county treasurer sought to certify the legal interest or right as abandoned, the county treasurer first would have to satisfy three requirements.

First, the county treasurer would have to publish a notice of intent to certify as abandoned the legal interests or rights in money deposited or in the use of money deposited for the purpose of caring for a cemetery lot. The notice would have to be published for two consecutive weeks in a newspaper of general circulation in the county in which the money was located, and, if the money were deposited for a cemetery lot located in another county, in a newspaper of general circulation in that county. A notice would have to include all of the following:

- The information relating to the cemetery lot provided to the county treasurer at the time money was deposited.
- A statement indicating that the cemetery lot could not be located.
- Contact information for the office of the county treasurer.
- A request that people possessing a legal interest or right or possessing information regarding the location of the cemetery lot contact the office of the county treasurer.
- A statement indicating that the money deposited with the county treasurer would be transferred to the county's general fund if the cemetery lot could not be located and the legal interests and rights were certified as abandoned.

Second, the county treasurer would have to post a copy of a published notice on the treasurer's website for at least 90 consecutive days.

Third, if a county treasurer were able to identify the location of a cemetery designated for care, the county treasurer would have to send a written notice by first-class mail to the owner or operator of the cemetery notifying the owner or operator of the legal interest or right presumed to be abandoned, providing any information about the cemetery lot provided to the county treasurer at the time the money was deposited, and requesting that the owner or operator notify the county treasurer within 90 days after receiving of the notice if the owner or operator could identify the location of the cemetery lot. The cemetery owner or operator would have to attempt to identify the location of the lot within the cemetery. If the cemetery owner or operator identified the location of the cemetery lot, the owner or operator would have to notify the county treasurer within 90 days after the receiving the notice. If a county treasurer were notified of the location of a cemetery lot, he or she could not certify a legal right or interest as abandoned.

If 120 days had elapsed after the provision of the notice and the county treasurer were still unable to identify the location of the cemetery lot based on any information provided in response to the notice, he or she could certify as abandoned the legal interests and rights in money deposited or in the use of money deposited for the purpose of caring for a cemetery lot under the Act. The county treasurer would have to retain a record of certification in his or her office.

#### Statement of Intent

The bill states, "Section 9...is intended by the legislature to advance the significant and legitimate public purpose of ensuring the availability and productive use of money deposited with a county treasurer for the purpose of maintaining cemetery lots and providing security in rights consistent with the health, safety, and welfare of the people of this state."

MCL 128.82 et al.

Legislative Analyst: Stephen Jackson

#### **FISCAL IMPACT**

The options provided by the bill for the discontinuance of county cemetery funds would reduce ongoing administrative costs for a county that currently has a county cemetery fund and chose to cease operations pursuant to the authority in the bill. A county would incur one-time costs to disburse the funds to the appropriate recipient cemeteries or determine if all or a portion of a county cemetery fund was abandoned. If funds were abandoned as described in the bill, a county could receive a one-time transfer of money from the county cemetery fund to the county general fund. According to the Michigan Association of County Treasurers, there are 10 counties that have county cemetery funds, as shown in Table 1 below.

Table 1

County Cemetery Fund Balances	
<u>County</u>	<u>Amount</u>
Ionia	\$268,003
Jackson	3,029
Kalamazoo	2,462
Kalkaska	31,074
Kent	6,507
Montcalm	36,000
Oakland	2,000
Ottawa	5,890
St. Joseph	14,238
Tuscola	<u>6,800</u>
TOTAL	\$376,003
Source: Michigan Association of County Treasurers	

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.