

Legislative Analysis



CEMETERIES

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

House Bill 6033 and 6036
Sponsor: Rep. Michael Sak

House Bill 6034
Sponsor: Rep. Barbara Farrah

House Bill 6039
Sponsor: Rep. Steve Bieda

House Bill 6035
Sponsor: Rep. Ted Hammon

House Bill 6040
Sponsor: Rep. Virgil Smith

House Bill 6037
Sponsor: Rep. Paul Condino

House Bill 6041
Sponsor: Rep. Lisa Wojno

House Bill 6038
Sponsor: Rep. George Cushingberry, Jr.

House Bill 6042
Sponsor: Rep. Mark Meadows

Committee: Regulatory Reform

Complete to 5-20-08

A SUMMARY OF HOUSE BILLS 6033-6042 AS INTRODUCED 5-1-08

The bills would amend various acts to, among other things, require cemetery owners to be licensed, revise provisions regarding endowment and perpetual care trusts, raise existing fines and penalties, create new criminal penalties, and reconcile provisions of the various acts to each other.

House Bill 6033

The bill would amend numerous existing sections of the Cemetery Regulation Act and add several new sections (MCL 456.522 et al.). It would provide for the regulation of cemetery owners, require cemetery owners to be licensed, expand permissive duties of the cemetery commissioner, increase fees and penalties, create a new restrictive fund, and revise provisions regarding endowment and perpetual care trusts. As is current law, the act (and the bill) would not apply to a cemetery owned and operated by a municipal corporation, church, or religious institution.

In brief, the bill would do the following:

- Require a cemetery owner to be licensed and each cemetery to be registered. The application fee for establishing a new cemetery or purchasing or changing control of an existing cemetery would be \$1,500 (increased from \$500). The annual registration fee per cemetery would be \$100 (increased from \$20) and the late fee for registering a cemetery would be increased from \$10 per day to \$25 per day.

Section 11, which sets the annual registration fee per cemetery at \$20, would be repealed. (Though a license would expire each year on July 1 and have to be renewed, the bill does not specifically establish an annual renewal fee. The bill is also silent regarding an initial license fee for an existing owner.)

- Allow the investigation of an application for establishing a new cemetery or buying an existing one to include investigating any proposed trustees of funds regulated under the act for a determination of past criminal activity and compliance with the act or departmental rules and orders. (The bill does not address the investigation of trustees of existing cemeteries.)
- As now, require each cemetery owner to establish and maintain an irrevocable endowment or perpetual care trust fund to be established. However, a person owning multiple cemeteries would have to establish a different fund for each cemetery. An initial deposit of at least \$75,000 would have to be made into a fund before any sale of burial rights, entombment rights, or columbarium rights were made. Monthly future contributions would have to be made as specified in the bill, with some exceptions, and reporting requirements would be revised.
- Currently, a cemetery must establish a merchandise trust account and deposit a percentage of the gross proceeds received from sales as determined by the commissioner. The bill would require a licensee to establish a trust account for each cemetery.
- Prohibit the use of funds in an irrevocable endowment or perpetual care trust or in a merchandise trust for salaries of board members, partners, or member or manager of a limited liability company that was a cemetery owner. Only earnings from the endowment and perpetual care trust funds could be used for endowment or perpetual care.
- Require separate accounts for each cemetery for all endowment and perpetual care trust accounts, merchandise trust and escrow accounts, construction accounts, development accounts, and prepaid funeral and cemetery sales trust accounts. Prohibit the bundling or pooling of trust funds from each cemetery or among cemeteries with common ownership unless approved by the commissioner. Each development project would have to have a separate development trust account.
- Require assets of each regulated trust fund to be invested according to Section 7302 of the Estates and Protected Individuals Code.
- Require each trust fund to be under the control of at least two trustees, at least one of which was a resident of Michigan and at least one of which was licensed in the state as a certified public accountant, attorney, investment advisor, or securities broker or dealer.

- Expand the permissive powers of the cemetery commissioner (director of the Department of Labor and Economic Growth) to include, among other things, certain subpoena powers; the authority to investigate impending violations; the control, management, or disposal of abandoned cemeteries; and impose license and registration sanctions.
- Increase the maximum amount for an administrative fine per violation from \$5,000 to \$10,000.
- Revise the cost to cemetery owners for inspections or audits conducted by the commissioner from a rate of \$10 per hour with a \$1,000 cap to an amount not to exceed the actual cost of the inspection or audit. Trustees of funds regulated under the act would also be subject to inspection and audit by the commissioner.
- Revise the criminal penalties for a violation of the act. Currently, the penalty for a business entity is an unspecified misdemeanor - punishable by a maximum of 90 days in jail and/or a maximum fine of \$500. This would be revised to a maximum fine of \$10,000 and no imprisonment. Currently, the penalty for an individual is a maximum of 90 days in jail and/or a \$100 fine for a first offense and for a second offense, a maximum of one year in jail and/or a maximum fine of \$1,000. This would be revised to imprisonment for no more than one year and/or a fine of not more than \$10,000 (the enhanced penalty for a second violation by an individual would be eliminated).
- Allow a court to expand the duties and responsibilities of a conservator or receiver as specified in the bill.
- Exempt the commissioner and his or her representatives from civil immunity if acting within the scope of their authority and the acts did not constitute gross negligence that was the proximate cause of any injuries or damages suffered. If these conditions were met and a claim or civil action filed, legal representation would have to be provided by the attorney general (or an assistant attorney general); any judgment or settlement would be the state's responsibility.
- The bill would create the Cemetery Regulation Fund. All fees, charges, and penalties currently are combined with other licensing and regulation fees for the licensing and regulation functions of the Commercial Services Bureau. Under the bill, they would instead be paid into the Cemetery Regulation Fund and used solely by the commissioner to carry out the requirements of the act. Money remaining in the fund at the end of a fiscal year would not lapse to the general fund.

House Bill 6034 and House Bill 6035

House Bill 6034 would amend Public Act 87 of 1855 (MCL 456.35a), which regulates burying grounds, and House Bill 6035 would amend Public Act 12 of 1869 (MCL

456.107a), which regulates rural cemeteries, to specify that funds established under those acts would be subject to the prescriptions of the Cemetery Regulation Act. Both bills are tie-barred to House Bill 6033.

House Bill 6036

The bill would amend the Revised Judicature Act (MCL 600.2926a). Currently, circuit court judges may appoint receivers in matters relating to cemeteries operating under the provisions of Public Act 87 of 1855 and Public Act 12 of 1869. The bill would allow the courts to also appoint conservators and would expand the appointments to cemeteries regulated under the Cemetery Regulation Act, Public Act 58 of 1915, and Public Act 13 of 1882 (Ex Sess). The bill would also delete the requirement that only persons with at least five year's experience in cemetery management be appointed. Further, the bill would delete the \$200 per week cap on compensation available to receivers; instead, the bill would require each appointing court to determine and approve both compensation and reimbursable expenses for receivers and conservators. The bill is tie-barred to House Bill 6033.

House Bill 6037

The bill would add a new section to the Michigan Penal Code (750.180a) to prohibit a person from violating, or conspiring with others to violate, provisions of the Cemetery Regulation Act pertaining to various trust accounts, including irrevocable endowment and perpetual care trust funds, and Section 12 of the Prepaid Funeral and Cemetery Sales Act. A first violation would be a misdemeanor punishable by imprisonment for not more than 90 days and or a maximum fine of \$10,000 or up to triple the amount of the loss, theft, or embezzlement, whichever was larger.

A second or subsequent violation would be a felony punishable by up to ten years imprisonment and/or a fine of not more than \$50,000 or up to triple the amount of the loss, theft, or embezzlement, whichever was larger.

A violator could be ordered by the court to pay restitution. The bill would not prohibit a person from being charged and convicted of any other violation committed by that person during the course of the violating the trust provisions. The bill is tie-barred to House Bill 6033.

House Bill 6038

The bill would amend the Business Corporation Act (MCL 450.1123). Currently, the act applies to cemetery, burial, and cremation associations. The bill would delete this reference, thus exempting these associations from regulation under the act. The bill is tie-barred to House Bill 6033.

House Bills 6039-6042

The bills would amend various acts to allow corporations formed for a purpose described in any of the acts to be formed instead under provisions of the Business Corporation Act. The cemetery commissioner would have authority to investigate a corporation formed under any of the various acts for violations involving the trusting or escrowing of money for any purpose under the act in question. Each bill is tie-barred to House Bill 6033.

House Bill 6039 would amend Public Act 12 of 1869 (MCL 456.101), which pertains to rural cemeteries. House Bill 6040 would amend Public Act 87 of 1855 (MCL 456.1), which pertains to burying grounds. House Bill 6041 would amend Public Act 58 of 1915 (MCL 456.201 and 456.203), which pertains to the incorporation of cremation companies and associations. House Bill 6042 would amend Public Act 13 of 1882 (Ex Sess), which pertains to vault associations (MCL 456.251).

FISCAL IMPACT:

There would be an indeterminate and likely negligible impact on the judiciary; any fiscal impact would come from increased administrative procedures. Currently, cemetery-related fees generate about \$10,000 annually. The bills would increase this revenue by, at most, \$50,000. This would not be sufficient to cover the existing functions or new functions of the Commercial Services Bureau with respect to the regulation of cemeteries. Other licensing and regulation fees would be needed to support the department's activities.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf
Ben Gielczyk
Bethany Wicksall

■ 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.