

Legislative Analysis



MUNICIPAL CEMETERIES: ENDOWMENT & PERPETUAL CARE FUNDS

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Senate Bill 1125 (Substitute H-1)

(Enacted as Public Act 422 of 2014)

Sponsor: Sen. Goeff Hansen

House Committee: Local Government

Senate Committee: Local Government and Elections

Complete to 12-8-14

A SUMMARY OF SENATE BILL 1125 (H-1) AS REPORTED BY HOUSE COMMITTEE

The bill would amend Public Act 215 of 1937, which authorizes municipalities to own or control cemetery or burial grounds, to do the following:

- Allow a municipality to establish an endowment and perpetual care fund for a municipally owned cemetery as part of an agreement with a community foundation.
- Require the community foundation to annually authorize two distributions of interest and other earnings from the fund to the municipality for care and maintenance of the cemetery.
- Require the cemetery to maintain records regarding the use of earnings from the fund.
- Allow the community foundation's fees and costs associated with the agreement to be paid from the principal of the fund.
- Specify information that the community foundation would have to include in an annual fund statement submitted to the legislative body of the municipality.

Specifically, the bill would allow a municipality that had a municipally owned cemetery to establish and maintain an irrevocable endowment and perpetual care fund as a component fund within a community foundation, by entering into an irrevocable agreement with the community foundation. (The act defines "municipality" as a city, township, village, or county.)

Amounts deposited into a fund would have to be held in perpetuity by the community foundation, except that the foundation would have to annually authorize two distributions of interest and other earnings to the municipality for care and maintenance of the cemetery. Withdrawals would have to be documented.

The cemetery would have to maintain records showing that earnings from the fund were used exclusively for endowment and for care and maintenance of the cemetery. The community foundation would not be responsible for ascertaining that money paid to the municipality was spent for the limited purposes authorized by the bill.

Subject to terms of the irrevocable agreement, the community foundation's fees and costs for services under the bill and the agreement could be paid from the fund's principal.

The community foundation would have to include the following information in an annual fund statement submitted to the legislative body of the municipality:

- Beginning and ending balances.
- Deposits to the fund, including interest and earnings from fund investments.
- Documentation of distributions from the fund.
- Documentation of any expenditures.

The bill would define "community foundation" as an organization meeting all of the following requirements:

- Has existed for at least 10 years.
- Has assets of at least \$10 million.
- Qualifies for exemption from federal income taxation under Section 501(c)(3) of the Internal Revenue Code.
- Supports a broad range of charitable activities within the specific geographic area of Michigan that it serves, such as a municipality.
- Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the geographic area served.
- Is publicly supported, as defined in federal regulations.
- Meets the requirements for treatment as a single entity under federal regulations.
- Is not a private foundation, as described in Section 509(a)(3) of the federal Internal Revenue Code.
- Has an independent governing body that represents the general public's interest and is not appointed by a single outside entity.
- Maintains continually at least one part-time or full-time employee beginning not later than six months after the community foundation is incorporated or established.
- Is subject to an annual independent financial audit.

In addition, a community foundation that was incorporated or established after January 9, 2001, would have to operate in a Michigan county that was not served by a community foundation when the foundation was incorporated or established, or operate a geographic component of an existing community foundation.

MCL 128.3 et al

FISCAL IMPACT:

As written, the bill would have a small indeterminate effect on local units of government that choose to establish an irrevocable endowment and perpetual care fund for a municipally owned cemetery. The investments of the endowment will always entail some risk. Poor performance of these investments, along with the community organization subtracting fees and costs from the principal, could reduce the size of the

endowment. Local general fund money could then be required to make up the difference in cemetery maintenance costs. Conversely, if the investments perform as expected or better, municipalities would not have to expend general fund money on cemetery maintenance, relieving a long term budgetary pressure.

POSITIONS:

The City of Muskegon supports the bill. (12-4-14)

The Council of Michigan Foundations supports the bill. (12-4-14)

The Michigan Municipal League supports the bill. (12-4-14)

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■ 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.