

H/D 4/23/91 (p. 1427)

H.F. 237 substituted 4/9/91

FILED FEB 07 1991

SENATE FILE

143

BY SZYMONIAK

(COMPANION TO LSB 1374HH BY HOLVECK)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
 Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the perpetual care of cemeteries and cemetery  
 2 lots and spaces.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 143

1 Section 1. Section 250.17, Code 1991, is amended to read  
2 as follows:

3 250.17 MAINTENANCE OF GRAVES.

4 The county boards of supervisors shall each year  
5 appropriate and pay to the owners of, or to the public board  
6 or officers having control of cemeteries within the state in  
7 which any such deceased service person is buried, a sum  
8 sufficient to pay for the care and maintenance of the lots on  
9 which they are buried, in all cases in which provision for  
10 such care is not otherwise made, or may conclude their  
11 responsibility by paying a mutually agreed to fee for  
12 perpetual care when the cemetery authority has established a  
13 perpetual care fund for the cemetery, to be paid either as a  
14 lump sum, or in not to exceed five installments in a manner  
15 agreed to by the parties.

16 Sec. 2. Section 368.3, Code 1991, is amended by adding the  
17 following new unnumbered paragraph:

18 NEW UNNUMBERED PARAGRAPH. When a city is discontinued  
19 under this section or under sections 368.11 through 368.22,  
20 and that city owns a cemetery, the board shall determine if  
21 any perpetual care funds exist and provide for their transfer  
22 to a trustee named by a district court or to the county or  
23 other suitable governmental entity.

24 Sec. 3. Section 566.14, Code 1991, is amended to read as  
25 follows:

26 566.14 MUNICIPAL-CORPORATION POLITICAL SUBDIVISIONS AS  
27 TRUSTEE TRUSTEES.

28 Counties, cities, irrespective of their form of government,  
29 boards of trustees of cities to whom the management of  
30 municipal cemeteries has been transferred by ordinance, and  
31 civil townships wholly outside of any city, ~~shall-be-and-they~~  
32 ~~are hereby-created~~ trustees in perpetuity, and are required to  
33 accept, receive, and expend all moneys and property donated or  
34 left to them by bequest for perpetual care, and that portion  
35 of cemetery lot sales or permanent charges made against

1 cemetery lots which has been set aside in a perpetual care  
2 fund for which there is no other acting trustee, to be used in  
3 caring for the property of the donor, or lot owner who by  
4 purchase or otherwise has provided for the perpetual care of a  
5 cemetery lot in any cemetery, or in accordance with the terms  
6 of such the donation, bequest, or agreement for sale and  
7 purchase of a cemetery lot, and the money or property thus  
8 received shall be used for no other purpose.

9 Sec. 4. Section 566.15, Code 1991, is amended to read as  
10 follows:

5147 11 566.15 AUTHORITY TO INVEST AND EXPEND FUNDS.

12 The board of supervisors, ~~mayer-and~~ city council, or board  
13 of trustees, or civil township trustees, as the case may be,  
14 shall ~~have-authority-to~~ receive and invest all moneys and  
15 property, ~~so-donated-or-bequeathed, and-that-portion-of~~  
16 ~~cemetery-lot-sales-and-permanent-charges-made-against-cemetery~~  
17 ~~lots-which-has-been-set-aside-in-a-perpetual-care-fund~~  
18 described in section 566.14 in such authorized investments and  
19 in the manner prescribed in section 682.23, ~~or-as-the-same-may~~  
20 ~~be-hereafter-amended.~~ Such The money must be invested at the  
21 market value of such the securities, and ~~they-shall-use~~ the  
22 income from such the investment must be used in caring for the  
23 property of the donor in any cemetery, or as ~~shall-be~~ provided  
24 in the terms of such the gift or donations donation or  
25 agreement for sale and purchase of a cemetery lot.

26 Sec. 5. Section 566.15, Code 1991, is amended by adding  
27 the following new unnumbered paragraph:

28 NEW UNNUMBERED PARAGRAPH. All current charges received  
29 shall be allocated to the perpetual care fund or to the fund  
30 paying the costs of cemetery operation. Care charge payments  
31 received one year or more after the date they were incurred  
32 shall be used to fund the cost of operating the cemetery.  
33 Care charge payments received one year or more in advance of  
34 their due date shall be deposited in the perpetual care fund.  
35 Interest from the perpetual care fund shall be used for the

1 maintenance of both occupied and unoccupied lots or spaces.  
2 Any remaining interest may be used for costs of access roads  
3 and paths, fencing, and general maintenance of the cemetery.  
4 Lots under perpetual care shall be maintained in accordance  
5 with the cemetery covenants of sale.

6 Sec. 6. Section 566.16, Code 1991, is amended to read as  
7 follows:

8 566.16 RESOLUTION OF ACCEPTANCE -- INTEREST.

9 Before any part of the principal may be so invested or  
10 used, the county, city, board of trustees of a city to whom  
11 the management of a municipal cemetery has been transferred by  
12 ordinance, or civil township shall, by resolution, accept the  
13 ~~donation or bequest, and that portion of cemetery lot sales or~~  
14 ~~permanent charges made against cemetery lots which is to be~~  
15 ~~used for perpetual care of cemetery lots,~~ moneys described in  
16 section 566.14 and, by resolution, shall provide for the  
17 payment of interest annually to the appropriate fund, or to  
18 the cemetery association, or to the person having in charge of  
19 the cemetery, to be used in caring for or maintaining the  
20 individual property of the donor in the cemetery, or lots  
21 which have been sold if provision was made for perpetual care,  
22 all in accordance with the terms of the donation or bequest,  
23 or the terms of the sale or purchase of a cemetery lot.

24 ~~In case~~ If there is no cemetery association or person in  
25 charge of the cemetery, ~~then~~ the income from ~~said~~ the fund  
26 shall be expended under the direction of the board of  
27 supervisors, city council, board of trustees, or civil  
28 township trustees, as the case may be, in accordance with the  
29 terms of ~~said~~ the donation or bequest, or the terms of the  
30 sale or purchase of a cemetery lot.

31 Sec. 7. Section 566.21, Code 1991, is amended to read as  
32 follows:

33 566.21 PRESUMPTION OF ABANDONMENT.

34 The continued failure by the owner to maintain or care for  
35 a an unoccupied cemetery lot or space not under perpetual

1 care, or to pay the annual care fee, for a period of ten years  
2 shall create and-establish the presumption that the same lot  
3 or space has been abandoned. A lot with empty space under  
4 perpetual care which has not had a burial for seventy-five  
5 years shall create a presumption that the empty space has been  
6 abandoned.

7 Sec. 8. Section 566.22, Code 1991, is amended to read as  
8 follows:

9 566.22 NOTICE OF ABANDONMENT.

10 Abandonment shall not be deemed complete unless after such  
11 the ten-year or seventy-five year period, whichever is  
12 applicable, there shall-have-been is given by the reversionary  
13 owner to the recorded owner, or if the recorded owner is  
14 deceased or the recorded owner's whereabouts are unknown, to  
15 the heirs of such deceased the recorded owner, notice  
16 declaring the lot to be abandoned.

17 Sec. 9. Section 566.24, Code 1991, is amended to read as  
18 follows:

19 566.24 ~~NOTICE-OF-NONABANDONMENT----~~EFFECT OVERCOMING  
20 PRESUMPTION OF ABANDONMENT.

21 If within one year from the time of serving such the  
22 notice, the recorded owner or the owner's heirs shall pay the  
23 past due annual care charges against the lot, then shall the  
24 presumption of abandonment shall no longer exist and the  
25 recorded owner may be required to make full payment for future  
26 perpetual care.

27 Sec. 10. Section 566.26, Code 1991, is amended by striking  
28 the section and inserting in lieu thereof the following:

29 566.26 USE OF FUNDS.

30 Any funds realized from the sale of all or a part of an  
31 unoccupied lot not under perpetual care which has reverted  
32 shall be allocated to the perpetual care fund and to the fund  
33 paying the costs of cemetery operation.

34 Sec. 11. Section 566.27, Code 1991, is amended by striking  
35 the section and inserting in lieu thereof the following:

1 566.27 ABANDONMENT IF PERPETUAL CARE PROVIDED BY WILL,  
2 COURT ORDER, OR CONTRACT.

3 After the seventy-five year period, sections 566.20 through  
4 566.26 are applicable to an unoccupied lot or space for which  
5 perpetual care has been provided by will, court order,  
6 contract, or as provided by law. However, the reversionary  
7 owner shall not acquire the absolute right to sell the  
8 unoccupied lot or space until three years after the date  
9 notice was served on the recorded owner or the recorded  
10 owner's heirs.

11 Sec. 12. Section 566A.1, Code 1991, is amended to read as  
12 follows:

13 566A.1 APPLICABILITY OF CHAPTER.

14 1. Any A corporation or other form of organization  
15 ~~organized or~~ engaging in the business ~~under the laws of the~~  
16 ~~state of Iowa, or wheresoever organized and engaging in the~~  
17 ~~business in the state of Iowa,~~ of the ownership, maintenance,  
18 or operation of a cemetery, providing which provides lots or  
19 other interment space therein for the remains of human bodies,  
20 ~~except such organizations which are churches or religious or~~  
21 ~~established fraternal societies, or incorporated cities or~~  
22 ~~other political subdivisions of the state of Iowa owning,~~  
23 ~~maintaining or operating cemeteries, shall be~~ is subject to  
24 ~~the provisions of~~ this chapter. However, a church, religious  
25 organization, or established fraternal society is subject only  
26 to subsection 2 of this section. Political subdivisions of  
27 the state are exempt from this chapter.

28 Sec. 13. Section 566A.1, Code 1991, is amended by adding  
29 the following new subsection:

30 NEW SUBSECTION. 2. An organization which establishes a  
31 fund for the perpetual care of a cemetery shall establish the  
32 fund as an irrevocable trust to provide for the care and  
33 maintenance of the cemetery for which it was established, and  
34 shall provide for the appointment of a trustee, with perpetual  
35 succession, in case the organization is dissolved or ceases to

1 be responsible for the cemetery's care and maintenance.

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EXPLANATION

3 This bill modifies provisions relating to perpetual care of  
4 cemeteries and cemetery lots. The bill allows lump-sum  
5 payments to be made by a county board of supervisors for the  
6 perpetual care of a service person's cemetery lot when care  
7 has not otherwise been provided. It also provides for the  
8 transfer of a perpetual care fund to a trustee when a city in  
9 charge of the fund is discontinued. Section 6 of the bill  
10 gives a city council, a board of trustees, and a civil  
11 township authority to expend funds for cemeteries if there is  
12 no association or person in charge. Currently, only the board  
13 of supervisors has that authority.

14 The bill also modifies current provisions on abandonment of  
15 cemetery lots and spaces to include nonpayment of annual care  
16 fees for 10 years and nonburial in an empty space for 75 years  
17 as situations creating a presumption of abandonment. The bill  
18 provides that, besides paying the past due annual charges, the  
19 record owner may be required to overcome the presumption of  
20 abandonment by making full payment for future perpetual care.  
21 The bill further provides that ownership of lots for which  
22 care has been provided by will, court order, or contract shall  
23 revert to the cemetery after the 75-year period if the record  
24 owner does not respond to notice of that fact within three  
25 years of receiving the notice.

26 The bill further provides that funds from the sale of  
27 unoccupied lots are to be allocated to the perpetual care fund  
28 and to the fund established to pay the costs of maintaining  
29 the cemetery. Annual care charge payments are to be deposited  
30 in the cemetery maintenance fund, and payments for future  
31 perpetual care are to be deposited in the perpetual care fund.

32 Finally, the bill continues the provision that political  
33 subdivisions are exempt from chapter 566A, which establishes  
34 cemetery regulations. Churches, religious organizations, and  
35 fraternal societies are also exempt, except for the

1 requirement that perpetual care funds established by them be  
2 established as irrevocable trusts.

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SENATE FILE 143

S-3147

1 Amend Senate File 143 as follows:

2 1. Page 2, by striking lines 11 through 25 and  
3 inserting the following:

4 "566.15 AUTHORITY TO INVEST FUNDS.

5 The board of supervisors, mayor and council, or  
6 ~~board-of-trustees~~ other elected governmental body, as  
7 the case may be, ~~shall-have~~ has the authority to  
8 receive and invest all moneys and property, ~~so~~ donated  
9 or bequeathed, and that portion of cemetery lot sales  
10 and permanent charges made against cemetery lots which  
11 ~~has have~~ have been set aside in a perpetual care fund, in  
12 ~~such-authorized investments and-in-the-manner~~  
13 ~~prescribed-in-section-682-237-or-as-the-same-may-be~~  
14 ~~hereafter-amended.--Such-money-must-be-invested-at-the~~  
15 ~~market-value-of-such-securities,-and-they-shall-use~~  
16 the for which they have exercised the judgment and  
17 care, under the circumstances then prevailing, which  
18 persons of prudence, discretion, and intelligence  
19 exercise in the management of their affairs. The  
20 income from such the investment shall be used in  
21 caring for the property of the donor in any cemetery,  
22 or as shall be provided in the terms of ~~such the~~ gift  
23 or donations or agreement for sale and purchase of a  
24 cemetery lot."

By COMMITTEE ON COMMERCE  
PAT DELUHERY, Chairperson

S-3147 FILED MARCH 21, 1991

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