

FEB 13 1991

HOUSE FILE 237
BY HOLVECK

Commerce
To Pass 2/17

(COMPANION TO LSB 1374SS BY
SZYMONIAK)

Passed House, Date 3/25/91 (p. 195) Passed Senate, Date 4/23/91 (p. 1132)

Vote: Ayes 97 Nays 0 Vote: Ayes 49 Nays 5

Approved May 21, 1991

*Repealed House as further amended by Senate
4/29/91 (p. 1877)
Ayes 43, Nays 4*

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:

HOUSE FILE 237

S-3355

- 1 Amend House File 237 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 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 ELAINE SZYMONIAK

S-3355, FILED APRIL 9, 1991
Adopted 4/23/91 (p. 1426)

TLSB 1374HH 74

sc/cf/24

HF 237

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:

566.15 566.15 AUTHORITY TO INVEST AND EXPEND FUNDS.

12 The board of supervisors, ~~mayor 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 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 AMENDMENT TO HOUSE FILE 237

H-3816

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1 Amend House File 237 as follows:

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

10

4 "566.15 AUTHORITY TO INVEST FUNDS.

11

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 been set aside in a perpetual care fund, in
12 ~~such authorized investments and in the manner~~
13 ~~prescribed in section 682.23, 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."

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RECEIVED FROM THE SENATE

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H-3816 FILED APRIL 25, 1991

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House Concurrent 4/29/91 (p. 18 17)

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HOUSE FILE 237

AN ACT

RELATING TO THE PERPETUAL CARE OF CEMETERIES AND CEMETERY
LOTS AND SPACES.

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

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

250.17 MAINTENANCE OF GRAVES.

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

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

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

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

566.14 MUNICIPAL CORPORATION POLITICAL SUBDIVISIONS AS TRUSTEE TRUSTEES.

Counties, cities, irrespective of their form of government, boards of trustees of cities to whom the management of municipal cemeteries has been transferred by ordinance, and civil townships wholly outside of any city, ~~shall be and they are hereby created~~ trustees in perpetuity, and are required to accept, receive, and expend all moneys and property donated or left to them by bequest for perpetual care, and that portion of cemetery lot sales or permanent charges made against cemetery lots which has been set aside in a perpetual care fund for which there is no other acting trustee, to be used in caring for the property of the donor, or lot owner who by purchase or otherwise has provided for the perpetual care of a cemetery lot in any cemetery, or in accordance with the terms of such the donation, bequest, or agreement for sale and purchase of a cemetery lot, and the money or property thus received shall be used for no other purpose.

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

566.15 AUTHORITY TO INVEST FUNDS.

The board of supervisors, mayor and council, or board of trustees other elected governmental body, as the case may be, ~~shall have~~ has the authority to receive and invest all moneys and property, so donated or bequeathed, and that portion of cemetery lot sales and permanent charges made against cemetery lots which has have been set aside in a perpetual care fund, ~~in such authorized investments and in the manner prescribed in section 682.29, or as the same may be hereafter amended. Such money must be invested at the market value of such securities, and they shall use the~~ for which they have exercised the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their affairs. The income from such the investment shall be used in caring for the property of the donor in any cemetery, or as shall be provided in the terms of such the gift or donations or agreement for sale and purchase of a cemetery lot.

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

NEW UNNUMBERED PARAGRAPH. All current charges received shall be allocated to the perpetual care fund or to the fund paying the costs of cemetery operation. Care charge payments received one year or more after the date they were incurred shall be used to fund the cost of operating the cemetery. Care charge payments received one year or more in advance of their due date shall be deposited in the perpetual care fund. Interest from the perpetual care fund shall be used for the maintenance of both occupied and unoccupied lots or spaces. Any remaining interest may be used for costs of access roads and paths, fencing, and general maintenance of the cemetery. Lots under perpetual care shall be maintained in accordance with the cemetery covenants of sale.

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

566.16 RESOLUTION OF ACCEPTANCE -- INTEREST.

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

In case if there is no cemetery association or person in charge of the cemetery, then the income from said the fund

shall be expended under the direction of the board of supervisors, city council, board of trustees, or civil township trustees, as the case may be, in accordance with the terms of said the donation or bequest, or the terms of the sale or purchase of a cemetery lot.

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

566.21 PRESUMPTION OF ABANDONMENT.

The continued failure by the owner to maintain or care for a an unoccupied cemetery lot or space not under perpetual care, or to pay the annual care fee, for a period of ten years shall create and establish the presumption that the same lot or space has been abandoned. A lot with empty space under perpetual care which has not had a burial for seventy-five years shall create a presumption that the empty space has been abandoned.

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

566.22 NOTICE OF ABANDONMENT.

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

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

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

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

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

566.26 USE OF FUNDS.

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

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

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

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

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

566A.1 APPLICABILITY OF CHAPTER.

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

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

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

ROBERT C. ARNOULD
Speaker of the House

JOE J. WELSH
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 237, Seventy-fourth General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 21, 1991

TERRY E. BRANSTAD
Governor

HF 237