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### **Analysis of Enrolled House Bills 5245 and 5246**

**Topic:** Proper disposal of unclaimed cremated remains

**Sponsor:** HB 5245: Representative Polidori  
HB 5246: Representative Kurtz

**Co-Sponsors:** HB 5245: Representatives Kurtz, Angerer, Ball, Barnett, L Brown, T Brown, Constan, Crawford, Dean, Denby, Dillon, Durhal, Espinoza, Geiss, Genetski, Gonzales, Gregory, Haase, Hammel, Hansen, Haugh, Haveman, Horn, Jackson, Johnson, Rick Jones, Robert Jones, Kandrevas, Knollenberg, Lahti, LeBlanc, Leland, Lemmons, Liss, Lori, Marleau, McDowell, Melton, Neumann, Opsommer, Pearce, Roberts, Rocca, Schuitmaker, Scott, Scripps, Sheltroun, Slavens, Slezak, Spade, Switalski, Tyler, Valentine  
HB 5246: Representatives Polidori, Angerer, Ball, Bolger, Booher, Lisa Brown, Terry Brown, Calley, Clemente, Constan, Corriveau, Crawford, Denby, DeShazor, Durhal, Espinoza, Geiss, Genetzki, Gonzales, Haase, Haines, Hammell, Hansen, Haugh, Haveman, Hildenbrand, Horn, B. Johnson, Rick Jones, Robert Jones, Kandrevas, Kowall, LeBlanc, Lemmons, Liss, Lori, Meekhof, Melton, Meltzer, Neumann, Opsommer, Pearce, Rogers, W. Schmidt, Scott, Scripps, Sheltroun, Slavens, Slezak, Spade, Tyler, Valentine

**Committee:** House: Military and Veterans Affairs and Homeland Security  
Senate Senior Citizens and Veterans Affairs

**Date Introduced:** August 25, 2009

**Date Enrolled:** November 12, 2009

**Date of Analysis:** November 16, 2009

**Position:** The Department of Energy, Labor & Economic Growth supports House Bill 5245. The department is not the lead agency on House Bill 5246.

**Problem/Background:** These bills were prompted by the Missing in America Project. Its stated mission is to "locate, identify and inter the unclaimed cremated remains of American veterans through the joint efforts of private, state and federal organizations. To provide honor and respect to those who have served this country by securing a final resting place for those forgotten heroes." Statistics from the project's website ([www.miap.us](http://www.miap.us)) indicate that nationally, 648 funeral homes were visited and 6642 cremains (cremated human remains) were found. Of those, 571 veterans' cremains were identified and 387 veterans were interred. These statistics

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indicate a long-term issue for funeral homes across the nation, and Michigan is one of just a few states to enact similar legislation to aid the project and continue the search.

**Description of Bills:** The bills are tie-barred.

House Bill 5245 amends Article 18 of the Occupational Code, by adding Section 1809B to the licensing requirements for funeral homes and funeral directors. The new section allows a funeral director to compile a list of names of those whose cremains are being held by the funeral home awaiting authorization for final disposition. The list can be released to a veteran's service organization to contact the National Cemetery Administration in St. Louis Missouri to determine whether the cremains are those of a veteran who would be eligible for burial at a veteran's cemetery. If they are eligible, the funeral director would make proper notice to the next of kin or persons authorized to determine the disposal of the cremains as provided in section 1809A, a new provision under House Bill 5426, and if they remain unclaimed, then provide for the disposition of the remains with a state or national veterans cemetery.

House Bill 5246 adds a companion section to the Occupational Code. Section 1809A is added to Article 18 of the Occupational Code, and allows for proper disposition of unclaimed cremated remains under specified circumstances, as long as a funeral director has reasonably tried to provide written notice of his or her intent to dispose of the cremains to those persons otherwise having the right to make decisions relating to the disposition of the decedent's body under the Estates and Protected Individuals Code. The section provides guidance for determining what "reasonable efforts" means, and also adds definitions for "proper disposition," and "unclaimed cremated remains."

The Senate amended House Bill 5246 to add similar civil immunity for a cemetery from a claim for damages by persons having the right to make decisions related to the disposition of a body under MCL 700.3206, if the cemetery relied on a written statement from a funeral director under the amendment. This provision was narrowly crafted to apply only in cases related to unclaimed cremains that belong to a veteran.

Both bills provide immunity from civil liability for any licensed funeral director that follows these provisions. He or she would also be immune from criminal liability for following the provisions of Section 1809B, as provided in House Bill 5245.

### **Summary of Arguments**

**Pro:** These bills aid the Missing in America Project in its quest to find and identify the cremains of missing veterans so they can be given the proper burial that America's veterans deserve.

They also help resolve a longstanding concern of Michigan funeral directors and cemeteries that have been holding cremains without recourse, because they have been unable to contact next of kin, or convince them to make the necessary arrangements for proper disposition. Testimony at committee hearings indicated that by providing immunity for funeral directors, they will be able to "do the right thing" without risking liability.

**Con:** These bills might be considered by some to add costs to the practice of funeral directing and added responsibility that they should not have to bear. However, the Michigan Funeral Directors' Association supported the bills, the requirements are permissive in House Bill 5645, and provide immunity under both bills.

By narrowly crafting the provisions related to cemeteries, they are not afforded the same protections provided to funeral directors, potentially creating an unfair playing field. However, the provision for cemeteries is perhaps misplaced, and liability protections for cemeteries should be made in amendments to the Cemetery Regulation Act, instead.

**Fiscal/Economic Impact**

(a) **Department:** No fiscal impact is expected.

**Budgetary:** There will be minimum costs to reprint copies of laws and rule books, and update the website.

**Revenue:** None.

(b) **State:** None, unless veterans' burials are paid for by state funds. It is expected that funding would generally come from Veterans' organizations, families, and perhaps Department of Human Services (DHS) under the State Emergency Relief (SER) program. Only a small percentage of the identified cremains should be identified as veterans, if the current statistics hold true here in Michigan. However, it is possible that disposition of other cremains might qualify to be paid for by the DHS SER program.

**Budgetary:** See discussion above.

**Revenue:** None.

(c) **Local Government:** See discussions above. Little to no impact is expected.

**Other State Departments:** The Department of Military and Veterans' Affairs supported the bills in committee. The costs to the agency would be negligible, as they already offer the services to locate veterans' records at no charge under their current budget. The Department of Human Services might be impacted, but how much has yet to be determined.

**Administrative Rules Impact:** None.

**Other issues:** The issue of liability for funeral homes who cannot find someone to authorize disposal of cremated remains can also be applied to crematories, which are licensed as cemeteries. While the issue was addressed narrowly in HB 5246, proposals to request similar provisions in the Cemetery Regulation Act are expected. The proposals would apply more broadly to all cemeteries, which do not enjoy the same immunity as funeral homes now have under all the circumstances described under HB 5246.