

# Legislative Analysis

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## PROHIBIT LANDLOCKED CEMETERIES

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House Bill 5404 (reported without amendment)

Sponsor: Rep. Dale W. Zorn

Committee: Local, Intergovernmental, and Regional Affairs

First Analysis (3-25-12)

*(Enacted as Public Act 525 of 2012)*

**BRIEF SUMMARY:** The bill would prohibit a land division or land plat that isolates a cemetery so that it is not accessible, and instead require that cemeteries be served by easements that provide vehicular access.

**FISCAL IMPACT:** The bill is not expected to have a significant fiscal impact.

### **THE APPARENT PROBLEM:**

Throughout Michigan, private cemeteries are located on family farms bearing the remains of honored ancestors buried there during the past two centuries.

When farms and other rural acreage are subdivided to make way for development, access to the historic private cemeteries can be threatened, and in some cases denied completely. For example, access to the Potter Cemetery in Ash Township of Monroe County—a cemetery having the remains of more than 80 of the area's founding families, including seven Civil War veterans—was denied for nearly eight years by surrounding property owners. See [Background Information](#).

Currently the Land Division Act is vague as to the required ingress to and egress from a cemetery. Legislation has been introduced to ensure that in the future, all cemeteries are accessible.

### **THE CONTENT OF THE BILL:**

House Bill 5404 would amend the Land Division Act to prohibit a land division or land plat that isolates a cemetery so that it is not "accessible," as that term is defined in the act.

The Land Division Act sets out criteria that land divisions must meet. House Bill 5404 would retain all of these provisions, and add a new requirement: *that the land division does not isolate a cemetery so that it does not meet the requirements of either Section 102(j)(i) or (ii) of the act.*

The act also governs conditions for local approval of a final plat, for all public and private streets, alleys, and roads in its jurisdiction, and specifies conditions when a plat must be rejected. House Bill 5404 again would retain all of those conditions and would add that a plat must be rejected *if the plat isolates a cemetery so that it does not meet the requirements of either Section 102(j)(i) or (ii).*

Section 102(j) defines the term "accessible," and says that term, in reference to a parcel, means that the parcel meets one or both of the following requirements:

(i) Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the State Transportation Department or county road commission, and of the city or village, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.

(ii) Is served by an existing easement that provides vehicular access to an existing road or street and that meets all applicable location standards of the State Transportation Department or county road commission, and of the city or village, or can be served by a proposed easement that will provide vehicular access to an existing road or street and that will meet all such applicable location standards.

MCL 560.109 and 560.182

### ***BACKGROUND INFORMATION:***

Legislative History. Four years ago, an identical bill passed the House of Representatives on March 4, 2008. Then known as House Bill 5589, the bill died in the Senate Committee on Local, Urban, and State Affairs at the end of the 2007-2008 legislative session.

The Friends of Potter Cemetery Association is a 501(c)(3) nonprofit organization comprising the family and friends of people buried in Potter Cemetery (formerly Swan Creek Cemetery) in Ash Township of Monroe County. Potter Cemetery was founded in 1860 by two local farmers, Royal Potter and John Flint, when each deeded one half acre to the Trustees of Swan Creek Cemetery Company. It is known that the cemetery contains the remains of 82 people, but as many as 200 people could be buried there, according to local history experts.

Although access was never recorded in 1860 when the cemetery was founded, family members were able to visit the graves of their loved ones via a farmer's lane. When the land was sold and worked for crops, access along the farmer's lane continued. However, in 1995-96 when the farm was subdivided in four parcels for development, access was far more limited, since an easement was not negotiated by the township board, despite the legal advice of the township attorney.

Beginning in the 1940's, the cemetery was neglected, and was eventually abandoned. Overgrown vegetation and fallen trees toppled headstones, animals made their homes among the gravesites, and vandals periodically trespassed.

In May 1999, restoration of the cemetery, following 60 years of neglect, was begun by the 48-member Friends of Potter Cemetery Association. The group was allowed to visit the site on 13 designated workdays. During that time, weeds, trees, and vines were

removed; 19 headstones were found underground; and markers were up-righted and cleaned (though many more need attention). Then, in September 2000, the surrounding property owners denied the Friends further access to Potter Cemetery. The cemetery has been landlocked for nearly eight years, its trustees unable to attend to its care despite their desire to do so.

For more information about Potter Cemetery visit  
[http://monroe.lib.us/community\\_info\\_ash\\_township\\_potter\\_cemetery.htm](http://monroe.lib.us/community_info_ash_township_potter_cemetery.htm)

***ARGUMENTS:***

***For:***

This bill would amend the Land Division Act to require the governing body of a municipality (defined as a township, city, or village) to reject a plat if it isolates a cemetery so that it is not accessible.

The bill guarantees that private cemeteries will remain accessible despite the subdivision of the land around them. In that way, family members will be able to pay their respects to their ancestors who are buried in family cemetery plots. It also will allow access to the private cemeteries by the members of cemetery trusts, set-up by families to maintain the sites.

***POSITIONS:***

The Friends of Potter Cemetery Association support the bill. (3-15-12)

The Michigan Cemetery Association supports the bill. (3-15-12)

The Michigan Townships Association supports the bill. (3-15-12)

The Michigan Association of Realtors is neutral on the bill. (3-15-12)

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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.