



February 3, 1999

# HOUSE BILL No. 1757

DIGEST OF HB1757 (Updated February 2, 1999 10:29 am - DI 02)

**Citations Affected:** IC 23-14.

**Synopsis:** Cemetery perpetual care funds. Provides that 50% of any appreciation of the principal of a cemetery perpetual care fund may be annually withdrawn within 45 days after the end of the fund's fiscal year. Provides that any income earned by the fund during the fiscal year may be withdrawn quarterly. Provides that only under certain circumstances may the cemetery perpetual care fund be subject to attachment by a creditor. Provides that the cemetery perpetual care fund may be additionally funded by payments received from transferred cemetery property.

**Effective:** July 1, 1999.

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**Lytle, Moses, Dillon**

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January 26, 1999, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.  
February 2, 1999, reported — Do Pass.

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HB 1757—LS 7867/DI 100+



February 3, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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## HOUSE BILL No. 1757

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A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 23-14-48-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The owner of  
3 each cemetery shall provide for the creation and establishment of an  
4 irrevocable perpetual care fund.  
5 (b) The principal of a perpetual care fund established under this  
6 section shall permanently remain intact, except as provided in this  
7 chapter. The principal shall be known as the "perpetual care fund" or  
8 "endowment care fund" of the cemetery.  
9 (c) **Fifty percent (50%) of any appreciation of the principal of**  
10 **the fund may be withdrawn annually not more than forty-five (45)**  
11 **days after the end of the fund's fiscal year.**  
12 (d) **Any income earned by the fund during the fiscal year may**  
13 **be withdrawn quarterly during the fund's fiscal year.**  
14 (e) The income from a ~~perpetual care~~ fund established under this  
15 section **and any withdrawal of the appreciation of the principal**  
16 **under subsection (c)** shall be devoted to the perpetual care of the  
17 cemetery.

HB 1757—LS 7867/DI 100+



1           **(f) The fund established by this chapter is not subject to**  
 2 **attachment by a creditor unless the underlying debt was incurred**  
 3 **for the perpetual care or endowment care (as defined in**  
 4 **IC 23-14-33-30) of the cemetery for which the fund was**  
 5 **established.**

6           SECTION 2. IC 23-14-48-3 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) A perpetual care  
 8 fund shall be established under this chapter as follows:

9           (1) In the case of a cemetery for earth burials, by the application  
 10 and payment to the perpetual care fund of an amount at least  
 11 equal to:

12           (A) fifteen percent (15%) of the sale price; or

13           (B) eighty cents (\$0.80) per square foot of area;

14 of each burial plot sold **or transferred**, whichever is greater.

15           (2) In the case of a community or public mausoleum, or  
 16 community or public garden crypt, by the application and  
 17 payment to the perpetual care fund of an amount at least equal to:

18           (A) eight percent (8%) of the sale price; or

19           (B) one hundred dollars (\$100) per crypt sold **or transferred**;  
 20 whichever is greater.

21           (3) In the case of a community columbarium, by the application  
 22 and payment to the perpetual care fund of an amount at least  
 23 equal to twenty dollars (\$20) per niche sold **or transferred**.

24           (b) From the sale price, ~~or~~ any payment on the sale price, **or in a**  
 25 **nonmonetary transfer**, the owner shall pay an amount in proportion  
 26 to the requirements of subsection (a)(1) through (a)(3) to the care fund.  
 27 The payment must be in cash and shall be deposited with the custodian  
 28 or trustee of the fund:

29           (1) not more than thirty (30) days after the end of the month in  
 30 which payments on the sale are received; **or**

31           (2) **not more than thirty (30) days after the end of the month**  
 32 **in which there was a transfer which did not involve a sale.**

33           (c) The payments required by this section are required to be paid  
 34 only on the original sale **or transfer** and not again for any subsequent  
 35 resale **or transfer** of the same ground interment rights, crypt, or niche.

36           SECTION 3. IC 23-14-48-4 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) In addition to  
 38 meeting the requirements of sections 1 through ~~2~~ **3** of this chapter, a  
 39 cemetery that:

40           (1) is organized after March 6, 1953, and before July 1, 1997, by  
 41 incorporation, association, individually, or any other means; or

42           (2) has its first burial after March 6, 1953, and before July 1,

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1           1997;  
 2 shall, before disposing of a burial lot or right, making a sale of a burial  
 3 lot or right, or making its first burial, cause to be deposited in a  
 4 financial institution the sum of twenty-five thousand dollars (\$25,000)  
 5 in cash in the perpetual care fund or endowment care fund established  
 6 under this chapter for the maintenance of the cemetery.

7           (b) The cemetery owner shall designate the financial institution as  
 8 trustee of the fund. The financial institution must execute an affidavit  
 9 stating that it has accepted the trusteeship of the fund and that the  
 10 twenty-five thousand dollars (\$25,000) has been deposited in the fund.  
 11 The cemetery shall:

- 12           (1) exhibit the affidavit in the principal office of the cemetery;  
 13           (2) keep the affidavit available at all times for examination; and  
 14           (3) record the affidavit in the miscellaneous records in the office  
 15           of the recorder in the county in which the cemetery is located.

16           (c) When the cemetery has deposited in the perpetual care fund or  
 17 endowment care fund, as required by this section, fifty thousand dollars  
 18 (\$50,000):

- 19           (1) the cemetery shall submit proof of this fact to its trustee; and  
 20           (2) the trustee shall pay over to the cemetery the amount of  
 21 twenty-five thousand dollars (\$25,000) that the cemetery  
 22 deposited in the fund under subsection (c).

23           SECTION 4. IC 23-14-48-5 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) In addition to  
 25 meeting the requirements of sections 1 through ~~2~~ 3 of this chapter, a  
 26 cemetery that:

- 27           (1) is organized after June 30, 1997, by incorporation, or any  
 28 other means; or  
 29           (2) has its first burial, entombment, or inurnment after June 30,  
 30 1997;

31 shall, before disposing of a burial lot or right, making a sale of a burial  
 32 lot or right, or making its first burial, entombment, or inurnment cause  
 33 to be deposited in a financial institution one hundred thousand dollars  
 34 (\$100,000) in cash in the perpetual care fund or endowment care fund  
 35 established under this chapter for the maintenance of the cemetery.

36           (b) The cemetery owner shall designate the financial institution as  
 37 trustee of the fund. The financial institution must execute an affidavit  
 38 stating that it has accepted the trusteeship of the fund and that the one  
 39 hundred thousand dollars (\$100,000) has been deposited in the fund.  
 40 The cemetery shall:

- 41           (1) exhibit the affidavit in the principal office of the cemetery;  
 42           (2) keep the affidavit available at all times for examination; and



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- 1           (3) record the affidavit in the miscellaneous records in the office
- 2           of the recorder of the county in which the cemetery is located.
- 3           (c) When the cemetery has deposited in the perpetual care fund or
- 4           endowment care fund, as required by this section, two hundred
- 5           thousand dollars (\$200,000):
- 6           (1) the cemetery shall submit proof of this fact to its trustee; and
- 7           (2) the trustee shall pay over to the cemetery one hundred
- 8           thousand dollars (\$100,000) that the cemetery deposited in the
- 9           fund under subsection (b).

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1757, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BISCHOFF, Chair

Committee Vote: yeas 13, nays 0.

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