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SFA



BILL ANALYSIS

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Senate Bill 37 (Substitute S-1 as reported)
Senate Bill 38 (Substitute S-1 as reported)
Senate Bill 39 (Substitute S-1 as reported)
Sponsor: Senator Gilda Z. Jacobs
Committee: Local, Urban and State Affairs

Date Completed: 4-22-03

RATIONALE

Under current law, a cemetery must deposit 15% of gross proceeds from the sale of burial rights into an irrevocable endowment care fund, and the income or proceeds from the fund must be devoted to the maintenance, improvement, and beautification of cemetery grounds. Some people suggest that the law should more specifically describe the uses of an endowment fund, such as lawn maintenance, pruning and removal of shrubs and trees, and maintenance and repair of manmade structures and memorial gardens. In particular, it has been suggested that an endowment fund should be used for upkeep that will allow the use of burial rights that have been sold.

CONTENT

Senate Bills 37 (S-1), 38 (S-1), and 39 (S-1) would amend the Cemetery Regulation Act, Public Act 12 of 1869, and Public Act 87 of 1855, respectively, to define "endowment care" and require cemetery endowment care funds to be invested subject to Section 7302 of the Estates and Protected Individuals Code (which contains a prudent investor standard). The bills are tie-barred to each other.

Senate Bill 37 (S-1)

The bill would amend the Cemetery Regulation Act to define "endowment care" as all general work necessary to keep the cemetery property in a presentable condition at all times, including the cutting of grass at reasonable intervals; the raking, cleaning, filling, seeding, and sodding of graves; the replacement, pruning, or removal of shrubs and trees in order to allow sold burial rights to be used; and the repair and maintenance of enclosures,

buildings, drives, walks, and the various memorial gardens.

Under the Act, the cemetery commissioner must require each cemetery to establish and maintain an irrevocable endowment care fund as required by Section 7a of Public Act 12 of 1869 or Section 35a of Public Act 87 of 1855 (sections that would be amended by Senate Bills 38 (S-1) and 39 (S-1), respectively). (The cemetery commissioner is the Director of the Department of Consumer and Industry Services, which is responsible for cemetery regulation.)

Currently, a cemetery that is required to establish an irrevocable endowment care fund must establish a merchandise trust account and deposit a percentage of the gross proceeds received from sales, as determined by the commissioner. The merchandise trust account must be maintained for the deposit of the money into a bank or trust company located in this State. Under the bill, the money would have to be deposited into a State- or national bank, a State- or Federally chartered savings and loan association, or a trust company.

Senate Bill 38 (S-1)

The bill would amend Public Act 12 of 1869, which deals with rural cemetery corporations. Under the Act, the board of a rural cemetery corporation must establish an irrevocable endowment fund. The Act refers to the fund required for "the purpose of keeping and maintaining the grounds" of cemeteries. The bill would refer, instead, to the fund required for "perpetual care". "Perpetual care" would have the same meaning as "endowment care" in Senate Bill 37 (S-1).

Currently, the Act states that endowment care funds must be invested subject to the provisions of Sections 1 and 2 of Public Act 177 of 1937. (That Act dealt with trust fund investment, and was repealed by Public Act 54 of 2000.) Under the bill, the funds would have to be invested subject to Section 7302 of the Estates and Protected Individuals Code (which requires a trustee to act as a prudent person would act in dealing with the property of another, including following the standards of the Michigan prudent investor rule).

(Under Public Act 12 of 1869, at least 10 people may form a corporation to purchase land for a cemetery and to establish, improve, and maintain it. The corporation may not acquire more than 300 acres.)

Senate Bill 39 (S-1)

The bill would amend Public Act 87 of 1855, which provides for cemetery corporations and requires the board of a cemetery corporation to establish an improvement or memorial care fund. The Act also requires the income or proceeds from the fund to be perpetually devoted to care for any assessments levied, keeping the lots clean and in good order, keeping monuments on the lots in good repair, and improvement and beautification of grounds reserved from sale and set apart for ornamental purposes. The bill, instead, would refer to an endowment care fund and require the income or proceeds from the fund to be perpetually devoted to "endowment care", which would be defined as proposed by Senate Bill 37 (S-1). Senate Bill 39 (S-1) also would delete the requirement that fund investments be subject to Sections 1 and 2 of Public Act 177 of 1937, and instead require the funds to be invested subject to Section 7302 of the Estates and Protected Individuals Code.

(Public Act 87 of 1855 allows five or more people to form a corporation for the purpose of acquiring land for a burial ground, and establishing, improving, and maintaining it. The corporation may acquire as much land as necessary for its burial ground.)

MCL 456.536 (S.B. 37)
456.107a (S.B. 38)
456.35 & 456.35a (S.B. 39)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate

Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In 2002, a woman trying to make burial arrangements for her husband was informed by the cemetery that a tree was growing on his plot and he could not be buried there. The cemetery offered another plot for the man, but the original plot had been purchased in the 1940s as part of a family plot and the woman wanted her husband to be buried with the rest of the family. The cemetery finally agreed to remove the tree at the expense of \$2,000 to the woman. By defining "endowment care" and including the removal of shrubs or trees to allow the use of sold burial rights, the bills would prevent such future incidents without placing undue burden on cemeteries. Though such occurrences are rare, this measure should be taken to ensure that people do not face unnecessary removal costs in addition to funeral expenses or added stress while mourning the loss of a loved one.

Supporting Argument

The bills would bring cemeteries' depository requirements up to date. Currently, under Section 16 of the Cemetery Regulation Act, merchandise trust accounts must be deposited with a company physically located in Michigan. Such investments, however, now are often made on a national or international basis. The bills would more accurately reflect the way business is presently done.

Supporting Argument

The law currently states that endowment care funds must be invested subject to sections of a statute that was repealed in 2000. The bills would update the investment requirements to be in conformity with current law.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.