Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 37, 38, and 39 (as enrolled)
Sponsor: Senator Gilda Z. Jacobs
Senate Committee: Local, Urban, and State Affairs
House Committee: Regulatory Reform

PUBLIC ACTS 89-91 of 2003

Date Completed: 8-4-03

RATIONALE

Under the 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 suggested 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 was suggested that an endowment fund should be used for upkeep that will assure access to interment rights.

CONTENT

Senate Bills 37, 38, and 39 amended 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 were tie-barred to each other.

Senate Bill 37

The bill amended 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 assure access to interment rights; 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 were amended by Senate Bills 38 and 39, respectively). (The cemetery commissioner is the Director of the Department of Consumer and Industry Services, which is responsible for cemetery regulation.)

Under the Act, 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. Previously, the merchandise trust account had to be maintained for the deposit of the money into a bank or trust company located in this State. Under the bill, the money must be deposited into a State or national bank, a State- or Federally chartered savings and loan association, or a trust company.

Under the bill, it is the responsibility of each registrant (a cemetery) to assure that documents relating to the merchandise trust account are provided to the commissioner upon request. If a subpoena is issued to obtain the documents, the registrant must pay all the costs related to obtaining the documents, regardless of the $100 charge limitation in Section 12a(2) of the Act. (Under that section, the books, papers, records, and documents relating to the business of a cemetery corporation, business entity, or agent acting on its behalf must be available for inspection or audit at any time during regular business hours with reasonable notice. The audit must be conducted by a qualified person whose services must be charged to and paid by the cemetery at the rate of $10 per hour, to a maximum of $100.)

Senate Bill 38

The bill amended 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 referred to the fund required for "the purpose of keeping and maintaining the grounds" of cemeteries. The bill refers, instead, to the fund required for "perpetual care". As defined in the bill, "perpetual care" has the same meaning as "endowment care" in Senate Bill 37.

Previously, the Act stated that endowment care funds had to 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 must 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

The bill amended Public Act 87 of 1855, which provides for cemetery corporations. Previously, the Act required the board of a cemetery corporation to establish an improvement or memorial care fund, and required 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, requires the board of a cemetery to establish an endowment care fund, and requires the income or proceeds from the fund to be perpetually devoted to "endowment care", which is defined as in Senate Bill 37.

Senate Bill 39 also deleted the requirement that fund investments be subject to Sections 1 and 2 of Public Act 177 of 1937, and instead requires 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 assure access to interment rights, the bills will prevent such future incidents without placing an undue burden on cemeteries. Though such occurrences are rare, these measures will 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 bring cemeteries' depository requirements up to date. Previously, under Section 16 of the Cemetery Regulation Act, merchandise trust accounts had to be deposited with a company physically located in Michigan. Such investments, however, now are often made on a national or international basis. The bills more accurately reflect the way business is presently done.

Supporting Argument

The law previously stated that endowment care funds had to be invested subject to sections of a statute that was repealed in 2000. The bills bring the investment requirements into conformity with current law.

Legislative Analyst: Julie Koval

FISCAL IMPACT

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

Fiscal Analyst: Marie Tyszkiewicz

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