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**SFA****BILL ANALYSIS**

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Senate Bills 37, 38, and 39 (Substitutes S-1 as reported by the Committee of the Whole)  
Sponsor: Senator Gilda Z. Jacobs  
Committee: Local, Urban and State Affairs

## **CONTENT**

The bills would amend three statutes that regulate cemeteries 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 tied to each other.

Senate Bill 37 (S-1) would amend the Cemetery Regulation Act to define "endowment care" as all general work necessary to keep 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 would be 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.) 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) 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.

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) 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 bill would refer, instead, to an endowment care fund. The bill would 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 would 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)

Legislative Analyst: Julie Koval

### **FISCAL IMPACT**

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

Date Completed: 4-30-03

Fiscal Analyst: Maria Tyszkiewicz

~~SB 37~~ SB 37sa

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.