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SFA



BILL ANALYSIS

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Senate Bill 534 (as enrolled)
Senate Bill 535 (as enrolled)
Sponsor: Senator Leon Stille
Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 11-26-01

RATIONALE

Under the Cemetery Regulation Act, the cemetery Commissioner (i.e., the Director of the Department of Consumer and Industry Services (DCIS) or the Director's designee) may bring an action in circuit court to enforce compliance with the Act if it appears that a person or registrant (someone registered with the DCIS to establish or operate a cemetery) has violated the Act or a rule promulgated or order issued under it. The court may grant an injunction and appoint a receiver or conservator to oversee the cemetery's business affairs. A problem with this process reportedly has arisen because the Act does not authorize a receiver or conservator to dispose of cemetery property and assets. Apparently, the only possible courses of action are for the cemetery to remain in receivership or conservatorship or for the receiver or conservator to return control of the property to the owner who violated the Act, rule, or order.

In addition, Public Act 10 of 1927 allows a corporation organized under Michigan law for the purpose of establishing or maintaining a cemetery to sell, assign, transfer, or convey all or part of its assets and liabilities to a municipal corporation (a county, township, city, or village) in which the cemetery is located or to any municipal corporation within 10 miles of the municipal corporation in which the cemetery is located. That Act applies only to a sale or transfer by a cemetery owner, however, and does not address the transfer of a cemetery to a municipal corporation by a court-appointed receiver or conservator.

Some people believe that both Acts should be amended to allow a receiver or conservator to

transfer a cemetery, and that Public Act 10 should authorize a receiver or conservator to transfer a cemetery to a municipal corporation without having to meet that Act's requirements for approval by a cemetery corporation's stockholders.

CONTENT

Senate Bills 534 (S-1) and 535 would amend the Cemetery Regulation Act and Public Act 10 of 1927, respectively, to allow a court-appointed receiver or conservator to sell, assign, transfer, or convey a cemetery to a municipal corporation or (under the Cemetery Regulation Act) to a person other than a funeral home owner, operator, or supervisor or a person licensed in mortuary science. The bills are tie-barred.

Senate Bill 534 (S-1)

The Cemetery Regulation Act provides that, when it appears to the Commissioner that a person or registrant has violated the Act or a rule promulgated or order issued under it, the Commissioner may take certain actions, including bringing an action in circuit court to enforce compliance with the Act, rule, or order. The Act allows the court to grant a permanent or temporary injunction or restraining order and to appoint a receiver or conservator.

The bill would authorize a receiver or conservator to take possession of the assets and sell, assign, transfer, or convey a cemetery to a municipal corporation or other person, under conditions prescribed by the

court, in order to discharge outstanding contractual obligations. A cemetery could not be transferred, however, to a licensee in the practice of mortuary science or a person who owned, managed, supervised, operated, or maintained a funeral establishment. The court also could allow the receiver or conservator to file for protection under the Bankruptcy Code.

In an order of sale of a cemetery, the court would have to provide for notice to creditors and the filing of claims against the receivership or conservatorship. Any remaining funds held by the cemetery in escrow under the Act would belong to the contract buyers or their beneficiaries and could not be distributed to the cemetery's general creditors.

The bill specifies that these provisions of the Act would not prohibit the court from allowing the sale of the cemetery to a person or municipal corporation, other than a licensee in the practice of mortuary science or a person who owned, managed, supervised, operated, or maintained a funeral establishment.

Senate Bill 535

Public Act 10 of 1927 provides that "any corporation" organized under Michigan law for the purpose of establishing or maintaining a cemetery may sell, assign, transfer, or convey all or part of its assets, rights, franchises, and liabilities to any municipal corporation in which the cemetery is located or to any municipal corporation within 10 miles of the municipal corporation in which the cemetery is located. Under the bill, that provision would apply to "a legal entity", rather than "any corporation", organized under Michigan law for the purpose of establishing or maintaining a cemetery. ("Legal entity" would mean a sole proprietorship, partnership, corporation, limited liability company, or any other entity.)

The bill specifies that the sale, assignment, transfer, or conveyance also could be as a result of the disposition of the cemetery and its assets and liabilities under a receivership or conservatorship action under the Cemetery Regulation Act (as it would be amended by Senate Bill 534 (S-1)).

Public Act 10 provides that the governing board of a cemetery corporation may pass a resolution containing the substance of a

contract of conveyance between the cemetery corporation and a municipal corporation and calling a special meeting of stockholders to authorize the transfer. Notice of the meeting must be given by publication for six consecutive weeks in a newspaper circulated in the county in which the cemetery corporation has its principal office or place of business. The bill specifies that a cemetery could be transferred to a municipal corporation in which the cemetery was located, pursuant to a court order issued as a result of a receivership or conservatorship action under the Cemetery Regulation Act, without a resolution executed by the governing board of the legal entity. The special meeting notice requirement would not apply if the sale, assignment, transfer, or conveyance were the result of the disposition of the cemetery and its assets and liabilities under a receivership or conservatorship pursuant to that Act.

MCL 456.529 (S.B. 534)

456.181-456.184 (S.B. 535)

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

The Cemetery Regulation Act allows the Commissioner to file a lawsuit to enforce compliance, or take other actions, when he or she believes that a cemetery owner has violated the Act or a rule promulgated or order issued under it. Although the court may grant an injunction and appoint a receiver or conservator to handle the cemetery's finances, the Act does not authorize the receiver or conservator to sell or transfer the cemetery property and other assets. According to the DCIS, a few years ago, a receiver appointed to take control of a cemetery in Ingham County attempted to sell the property. The owner, who had been in violation of the Act and orders issued under it, challenged the sale in court. The Ingham County Circuit Court ruled that the receiver had no authority under the Act to dispose of the cemetery property, other than to return it to the owner. State regulators, then, are left with the option of keeping the cemetery in receivership or conservatorship or returning control of the property to the owner who mishandled the

business in the first place. Neither alternative is desirable.

This problem has arisen again in a case that the Commissioner has been dealing with for more than three years. According to the DCIS, the owner of the Pine Ridge Memorial Cemetery in Grand Haven Township repeatedly has failed to meet statutory obligations to purchasers of burial plots. The Commissioner evidently has pursued court action against the owner on several occasions and the township reportedly is willing to assume ownership and operation of the cemetery, but the Commissioner has opted not to pursue receivership because a receiver would not be authorized to dispose of the property.

By allowing the sale or transfer of a cemetery to a municipal corporation or other person by a receiver or conservator appointed to oversee the assets of a cemetery whose owner was violating the Act, Senate Bill 534 (S-1) would establish a reasonable option for enforcing State cemetery regulations and ensuring the responsible management of cemeteries and their assets. Reportedly, with this authorization, the Commissioner would be more likely to pursue receivership in the Pine Ridge case and others like it.

Response: Although a receiver or conservator is not authorized to sell a cemetery, the Commissioner and the court can exert pressure on a cemetery owner to sell the property on his or her own. In fact, according to the DCIS, that is how the Pine Ridge case might ultimately be resolved.

Supporting Argument

Public Act 10 of 1927 governs the sale of a cemetery to a municipal corporation. That Act allows a cemetery corporation to sell or transfer the cemetery to certain municipal corporations, but establishes a process for approving a contract as well as notifying and securing the approval of stockholders. By excusing a sale by a receiver or conservator from the Act's notice and approval requirements, Senate Bill 535 would expedite the sale of a cemetery to a municipal corporation by a receiver or conservator, as would be allowed under Senate Bill 534 (S-1).

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would have a little or negligible fiscal impact on local units and no fiscal impact on the State. The most likely fiscal impact on a local unit would occur if a municipal corporation acquired a cemetery. The impact would include revenues of an unknown amount from the operation of the cemetery as well as an unknown level of expenses.

Fiscal Analyst: D. Zin

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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.