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SFA

BILL ANALYSIS

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Senate Bills 534 and 535 (as introduced 6-12-01)

Sponsor: Senator Leon Stille

Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 11-6-01

CONTENT

Senate Bills 534 and 535 would amend, respectively, the Cemetery Regulation Act and Public Act 10 of 1927, which authorizes cemetery corporations to sell or convey property rights to municipal corporations, to allow a court-appointed receiver or conservator to sell, assign, transfer, or convey a cemetery to a municipal corporation (a county, township, city, or village) or another person. The bills are tie-barred.

Senate Bill 534

The Cemetery Regulation Act provides that, when it appears to the Commissioner (i.e., the Director of the Department of Consumer and Industry Services) 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. 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.

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).

Public Act 10 provides that the governing board of the 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)

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.