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Senate Bill 1125 (as passed by the Senate)
Sponsor: Senator Goeff Hansen
Committee: Local Government and Elections

Date Completed: 12-2-14

CONTENT

The bill would amend Public Act 215 of 1937, which authorizes municipalities to own or control cemetery or burial grounds, to do the following:

- **Allow a municipality to establish an endowment and perpetual care fund for a municipally owned cemetery as part of an agreement with a community foundation.**
- **Require the community foundation to authorize the disbursement of earnings from the fund to the municipality for care and maintenance of the cemetery.**
- **Require the cemetery to maintain records regarding the use of earnings from the fund.**
- **Allow the community foundation's fees and costs associated with the agreement to be paid from the principal of the fund.**
- **Specify information that the community foundation would have to include in an annual audit.**

Specifically, the bill would allow a municipality that had a municipally owned cemetery to establish and maintain an irrevocable endowment and perpetual care fund as a component fund within a community foundation, by entering into an irrevocable agreement with the community foundation. (The Act defines "municipality" as a city, township, village, or county.)

Amounts deposited into a fund would have to be held in perpetuity by the community foundation, except that the foundation would have to authorize distributions of interest and other earnings to the municipality for care and maintenance of the cemetery. Withdrawals would have to be documented.

The cemetery would have to maintain records showing that earnings from the fund were used exclusively for endowment and for care and maintenance of the cemetery. The community foundation would not be responsible for ascertaining that money paid to the municipality was spent for the limited purposes authorized by the bill.

Subject to terms of the irrevocable agreement, the community foundation's fees and costs for services under the bill and the agreement could be paid from the fund's principal.

The community foundation would have to include the following information in an annual audit:

- Beginning and ending balances.
- Receipts from the sale of burial, entombment, and columbarium rights.
- Deposits to the fund.

- Documentation of any expenditures for the community foundation's fees and costs for services it provided under the agreement.

The accuracy of the audit would have to be certified by a certified public accountant.

The bill would define "community foundation" as an organization meeting all of the following requirements:

- Has existed for at least 10 years.
- Has assets of at least \$10.0 million.
- Qualifies for exemption from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code.
- Supports a broad range of charitable activities within the specific geographic area of Michigan that it serves, such as a municipality.
- Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the geographic area served.
- Is publicly supported, as defined in Federal regulations.
- Meets the requirements for treatment as a single entity under Federal regulations.
- Is not a private foundation, as described in Section 509(a)(3) of the Internal Revenue Code.
- Has an independent governing body that represents the general public's interest and is not appointed by a single outside entity.
- Maintains continually at least one part-time or full-time employee beginning not later than six months after the community foundation is incorporated or established.
- Is subject to an annual independent financial audit.

In addition, a community foundation that was incorporated or established after January 9, 2001, would have to operate in a Michigan county that was not served by a community foundation when the foundation was incorporated or established, or operate a geographic component of an existing community foundation.

MCL 128.3 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an unknown fiscal impact on a municipality that operated a cemetery and established an irrevocable endowment and perpetual care fund with a community foundation, as authorized by the bill. To the extent that the investment management and vehicles provided by the community foundation increased returns to the fund, additional revenue would be available for cemetery maintenance. For municipalities that use local general fund money to pay for cemetery maintenance, additional cemetery endowment earnings potentially would reduce the use of general fund revenue for cemetery maintenance. Depending on the types of investment vehicles used, however, the fund also would have increased investment risk with potential for volatility and losses. The endowment and perpetual care fund would be reduced by the fees and costs for services provided by the community foundation according to the agreement with the municipality.

Fiscal Analyst: Elizabeth Pratt

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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.