Wendy H. Gridley *Legislative Service Commission*

Sub. H.B. 531*

123rd General Assembly
(As Reported by S. State & Local Government & Veterans Affairs)

Reps. Hollister, Schuler, Metzger, D. Miller, Van Vyven, Hartnett, Clancy, Grendell, Redfern, Willamowski, Netzley, Terwilleger, Taylor, Peterson, Smith, Buehrer, Britton, Distel, Roman, Krupinski, Sullivan, Harris, Bender, Verich, Carey, Evans, Allen, Schuring, Wilson, Brading, Buchy, Logan, Tiberi, O'Brien, Hoops, Winkler, Stapleton, Vesper, A. Core, Damschroder, Stevens

BILL SUMMARY

- Makes changes to the law governing the fee for the issuance of burial permits, including increasing the amount of the fee and the portion of the fee payable to the Division of Real Estate and Professional Licensing of the Department of Commerce.
- Exempts certain political subdivisions from the requirement of paying a cemetery registration fee and annually renewing their cemetery registrations.
- Exempts family cemeteries generally from maintaining either cemetery endowment care trusts or preneed cemetery merchandise and services contract funds.
- Adds the cost and expenses incurred to establish, manage, and administer a cemetery endowment care trust to the list of purposes for which the dividends and interest from such a trust may be used.
- Permits certain trustees for cemetery endowment care trusts to provide a fidelity bond instead of a corporate surety bond, and exempts trust companies appointed as such a trustee from providing any bond.

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* *This analysis was prepared before the report of the Senate State and Local Government and Veterans Affairs Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Changes the formula for determining the amount to be held in a preneed cemetery merchandise and services contract fund to reflect a seller's retail prices of merchandise and services as of the date of the preneed contract, instead of the time the final contractual payment is received.

CONTENT AND OPERATION

Fees for burial permits

Existing law

Current law requires that a burial permit be obtained before the body of any person who died in this state is interred, deposited in a vault or tomb, cremated, or otherwise disposed of by a funeral director.[1] The permit generally is issued for a fee of *$2.50* by a local registrar or sub-registrar of vital statistics only after a death, fetal death, or provisional death certificate is filed.[2] Of that fee, $2 must be paid to the Division of Real Estate and Professional Licensing of the Department of Commerce to be used for the registration of cemeteries by the Division and for the operation of the Ohio Cemetery Dispute Resolution Commission.[3] The Director of Commerce may reduce the amount of the fee and reduce the portion of the fee for the use of the Division and the Commission, if the Director determines that the funds generated by the fee are more than the Division and the Commission need to carry out their duties. (Sec. 3705.17.)

Changes proposed by the bill

The bill increases the burial permit fee from $2.50 to *$3* and increases the portion of that fee that is for the use of the Division of Real Estate and Professional Licensing and the Ohio Cemetery Dispute Resolution Commission from $2 to *$2.50*. The bill also requires a local registrar or sub-registrar of vital

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[1] *This includes a "burial-transit permit."*

[2] *A burial permit must be issued without the payment of the fee if a burial's total cost will be paid by a federal, state, or political subdivision entity. The Director of Health must provide for that issuance by rule.*

[3] *This Commission reviews complaints about cemeteries and other specified matters, investigates the complaints and conducts other investigations on its own motion, conducts mediations and both informal and formal hearings, makes recommendations, and, when appropriate, refers complaints to the Real Estate Commission, a prosecuting attorney, or the Attorney General (secs. 4767.05 to 4767.07, not in the bill; sec. 4767.08, amended by the bill).*

statistics to transmit the portion of the fee that is for the use of the Division and the Commission to the state treasury on a quarterly basis or, if possible, more frequently. (Sec. 3705.17.)

Registration of cemeteries

Existing law

Current law requires the owner or operator of a cemetery to annually apply to the Division of Real Estate and Professional Licensing to register the cemetery. As part of that registration, an applicant must submit specified information and documentation, and a fee is charged of $25 for one cemetery, $40 for two cemeteries, and $50 for three or more cemeteries.[4] (Secs. 4767.03(A)(1) and 4767.04(A).)

Changes proposed by the bill

Political subdivision cemeteries. The bill exempts political subdivisions from the payment of cemetery *registration fees* and also redefines the term "political subdivision" so that only those governmental entities that are currently authorized by law to operate and maintain cemeteries are included (secs. 4767.01(B) and 4767.03(A)(1) and (B)).[5] In addition, the bill exempts political subdivisions from *annually registering* their cemeteries and, instead, only requires them to renew or update their registration whenever there is a change in the statutorily required information that accompanies a registration application or

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[4] *As with the specified portion of the fee for a burial permit, these fees are for the use of the Division of Real Estate and Professional Licensing in registering cemeteries and the operation of the Ohio Cemetery Dispute Resolution Commission, and may be reduced by the Director of Commerce if it is determined that the Division and the Commission do not need the amount of funds being generated (sec. 4767.03(A)(2) and (D)).*

[5] *Governmental entities that can operate and maintain cemeteries under the Revised Code are individual municipal corporations, individual townships, joint townships, and union cemeteries (townships and/or municipal corporations joining together).*

Under existing law, the term "political subdivision" is defined by cross-reference to the Elections Law as a county, township, city, village, or school district (sec. 4767.01(B) by cross-reference to sec. 3501.01(T)).

Consistent with the bill's new definition of a political subdivision, certain existing references to the "legislative authority" of a political subdivision that operates and maintains a cemetery are technically amended by the bill to the "governing body" of such a political subdivision (sec. 4767.03(B)).

whenever additional land is acquired to increase the size of a cemetery. If a political subdivision *intends to acquire* additional land to increase the size of an existing cemetery it operates and maintains or the political subdivision *intends to open* a new cemetery, it must notify the Division of Real Estate and Professional Licensing at least 30 days before the acquisition or opening to renew its registration of the existing cemetery or to register the new cemetery, as appropriate. Finally, a political subdivision's cemetery registration will expire if it ceases to operate and maintain the cemetery. (Secs. 4767.03(C) and 4767.04(C).)

All cemeteries. The bill requires any applicant for a cemetery certificate of registration to include a copy of its most recent annual report if required (1) by the Division of Real Estate and Professional Licensing (replacing existing law's inaccurate reference to the "Ohio Real Estate Commission") under the Preneed Cemetery Merchandise and Services Contract Law *or* (2) by the Ohio Cemetery Dispute Resolution Commission (added by the bill). The bill also corrects an inaccurate Revised Code cross-reference in current law pertaining to the Commission's investigatory functions.[6] (Secs. 4767.04(A)(5) and 4767.08(A).)

Cemetery endowment care trusts

Covered and exempted cemeteries

Persons operating cemeteries organized or developed after July 1, 1970, must establish an endowment care trust with a minimum of $50,000 (cash or government bonds) before they may sell or offer for sale any burial lot, burial right, entombment right, or columbarium right in that cemetery. Cemeteries owned and operated entirely and exclusively by churches, religious societies, fraternal organizations, and political subdivisions, as well as national cemeteries, are exempted from this requirement. The bill exempts *family cemeteries* from this requirement as well. A "family cemetery" is a cemetery containing the human remains of persons, at least three-fourths of whom have a common ancestor or who are the spouse or adopted child of that common ancestor. (Sec. 1721.21(C) and (H); sec. 4767.02(C), not in the bill.)

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[6] *Current law lists violations of specified Revised Code sections that the Ohio Cemetery Dispute Resolution Commission must investigate and includes in the list a reference to section 4765.03. That section creates the office of the executive director of the State Board of Emergency Medical Services and lists that director's duties. The bill eliminates that inaccurate reference and substitutes a reference to section 4767.03, which generally requires cemetery owners or operators to annually apply for cemetery registration and to submit specified documentation and a registration fee with their application.*

Use of dividends and interest

A cemetery endowment care trust must be segregated from all other assets. Operating cemeteries must deposit at least 10% of gross sales proceeds from burial lot, burial right, entombment right, or columbarium right sales into the trust. Dividend and interest income from the trust currently can be used only to maintain, supervise, improve, and preserve the cemetery. The bill permits the dividends and interest to also be used for the cost and expenses incurred to establish, manage, and administer the trust. (Sec. 1721.21(C), (D), and (I).)

Trustees and their bonding

Trustees of an endowment care trust must be (1) at least three individuals who have resided for at least one year in the county where the cemetery is located, (2) a licensed trust company, or (3) a national bank or federal savings association.[7] If a person or entity *other than a financial institution* is designated as a trustee, the trustee currently must be bonded by a corporate surety bond in an amount at least equal to the funds held by the trustee. The bill provides that trust companies appointed as trustees also do not need to be bonded and that those trustees that must be bonded may provide a fidelity bond in lieu of a corporate surety bond. (Sec. 1721.21(E).)

Preneed cemetery merchandise and services contracts

Background

Current law regulates preneed cemetery merchandise and services contracts (hereinafter, preneed contracts), which are contracts to sell or otherwise provide (1) an outer burial container, monument, marker, urn, or other merchandise customarily sold by cemeteries or (2) opening and closing services in connection with the disposition of a human body. Under these contracts, payment is made either outright or on an installment basis prior to the person's death. Preneed contracts do not include preneed funeral contracts or contracts for the sale of burial lots or burial, interment, entombment, or columbarium rights. (Sec. 1721.211(A).)

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[7] *It appears that a qualified trust company, national bank, or federal savings association must have pledged specified types of interest bearing "securities" (sec. 1111.04, not in the bill).*

Retained fund

Sellers of preneed contracts generally must maintain a specified amount of their actual cost or of their retail price of merchandise and services to be provided under a preneed contract in "a preneed cemetery merchandise and services contract fund" until the death of the person for whose benefit the contract is made or the merchandise is delivered. That amount must be delivered to the fund's trustee or trustees within 30 days after the last business day of the month in which the final contractual payment is received by the seller, and it currently must be the greater of 110% of the seller's actual cost or 30% of the seller's retail price of the merchandise *and* 70% of the seller's retail price of the services to be provided under the preneed contract *as of the time the final contractual payment is received*. The bill changes this calculation so that the retail prices are calculated *as of the date of the contract*, not the time the final contractual payment is received. (Sec. 1721.211(C)(1) and (D).)

Trustees and their bonding

A preneed cemetery merchandise and services contract fund must have a licensed trust company, or a national bank or federal savings association, that has pledged specified securities as its trustee, or alternatively *three individuals* who have been residents of the seller's county for at least one year and who have provided a specified bond as its trustees. Currently, each individual trustee must be bonded by a corporate surety in an amount at least equal to the amount deposited in the fund. The bill retains these provisions, but also provides that (1) if moneys received from more than one preneed contract are placed in a "common or pooled trust fund" under a "single trust instrument" with the consent of the contracts' beneficiaries and (2) three individuals are the trustees of such a fund, they must be bonded by either a corporate surety bond (existing law) or a fidelity bond (added by the bill) in an aggregate amount of 100% of the moneys held in such a fund. (Sec. 1721.211(C)(2) and (E).)

Exemptions

Current regulations of preneed contracts do not apply to an established and legally cognizable church or denomination that is exempt from federal income taxation if (1) the contract pertains to a cemetery owned and operated entirely and exclusively by the church or denomination and (2) the church or denomination voluntarily adopts rules to safeguard and secure all moneys received under preneed contracts. The bill adds to those entities exempt from the regulations of preneed contracts, "established" fraternal organizations, political subdivisions, national cemeteries, and family cemeteries (see definition under "***Cemetery endowment care trusts***," above) if they voluntarily adopt similar rules and, in the case of

fraternal organizations and political subdivisions, the cemeteries are "owned and operated entirely and exclusively" by those entities. (Sec. 1721.211(O).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-30-99	p. 1473
Reported, H. Local Gov't & Townships	02-01-00	pp. 1580-1581
Passed House (96-0)	03-15-00	pp. 1645-1646
Reported, S. State & Local Gov't & Veterans Affairs	---	---

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