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Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.

Detailed Fiscal Analysis

The bill makes the following changes to sections of the Revised Code regarding cemeteries controlled and managed by political subdivisions, cemetery associations, the classification of certain real estate brokers and salespersons, and the rights and responsibilities accorded to the Division of Real Estate in the Department of Commerce and the Cemetery Dispute Resolution Commission.

Political Subdivisions

The bill includes municipal corporations within the laws pertaining to cemeteries controlled and managed by political subdivisions and further clarifies compliance issues that govern all political subdivisions in this regard. Among these issues is the definition of legal situations within which disinterment may occur and the requirement that the applicable board of township trustees, officers of a municipal corporation, directors of a cemetery association, or others in control and management of a cemetery be given notice that an application for disinterment has been filed. The provisions of the bill regarding political subdivisions elucidate the process involved with cemetery operations and as a result do not generate any additional costs to political subdivisions.

Cemeteries and Cemetery Associations

Included in H.B. 18 are various definitional and procedural changes affecting the operations of cemeteries and cemetery associations. The bill takes into consideration the fact that companies or associations incorporated for cemetery purposes may have multiple holdings and stipulates that land acquired for such purposes be restricted to six hundred forty acres at each location. Current law restricts land holdings to a total of six hundred forty acres, which can seriously curtail further land acquisitions by larger cemetery companies or associations.

The bill further defines buildings appropriate for cemetery purposes and makes a distinction between a contract for a preneed burial vault and a contract for preneed cemetery merchandise and services. The latter term is a more expansive definition, including such items as monuments, markers, or other types of merchandise customarily sold by cemeteries, as well as opening and closing services.

Under current law any entity operating a cemetery in Ohio is required to maintain and establish an endowment *fund*. The bill requires that endowment care *trusts* be established and places certain restrictions on the funds held in trust by requiring that the dividend and interest income be used only for the maintenance, supervision, improvement, and preservation of the

grounds, lots, buildings, equipment, statuary, and other real and personal property of the cemetery. The bill requires that annual reports of all the assets and investments of the endowment care trust be prepared, maintained, and available for inspection at reasonable times. Cemeteries required to establish endowment care trusts must also file annual affidavits with the Division of Real Estate in the Department of Commerce certifying that use of such funds has conformed to law and that any investment of moneys in the trust has conformed to the investing standards set forth in sections 2109.37 and 2109.371 of the Revised Code.

The bill also places restrictions on the care and use of funds received in payment of preneed cemetery merchandise and services contracts. The greater of one hundred ten percent of the seller's actual cost of or thirty percent of the seller's retail price of the merchandise and seventy percent of the seller's retail price of the services to be provided under a preneed cemetery merchandise and services contract must remain intact as a fund until the death of the person for whose benefit the contract is made or the merchandise is delivered. This is in contrast to current law which requires that sixty percent of all payments for burial vaults made under a preneed burial vault contract be held on deposit.

Trustees of these funds may be a trust company licensed under Chapter 1111 of the Revised Code, a national bank or a federal savings association or at least three individuals who have been residents of the county in which the seller is located for at least one year. Trustees must either pledge securities accordance with section 111.04 of the Revised Code or secure a corporate surety bond in an amount that is at least equal to the amount deposited in the fund.

Under the bill, the owner or person responsible for the operation of each cemetery covered under section 4767.03 must submit a list of the names and addresses of all persons employed or otherwise engaged by the cemetery to sell interment rights. An independent contractor may also sell interment rights, but must be sponsored by the cemetery and included in this list. The list is to be filed with the Division of Real Estate in conjunction with the application or renewal of the cemetery's registration as required under section 4767.03 of the Revised Code. Additional filings would be required in the event that a cemetery adds or loses sellers of interment rights and these revised lists must be filed within the calendar quarter immediately following the hire or termination date of that seller. The provision of this information also serves to register the sellers of interment rights with the Division.

The registration process outlined in the bill for sellers of interment rights differs greatly from current practice. Presently, these people are considered limited real estate brokers and limited real estate salespersons and are covered by certain licensing and examination requirements. Each limited real estate broker and each limited real estate salesperson pays annual fees of \$49 and \$39, respectively. Elimination of this subcategory of real estate brokers and salespersons would decrease the amount of fee revenue received by the Division as well as the amount deposited in the Real Estate Education and Research Fund (four dollars of each licensing fee is deposited in the fund). According to a spokesperson from the Division, there are 48 licensed limited real estate brokers and 150 licensed limited real estate salespersons in Ohio. Combined with additional branch fees assessed, the Division would lose approximately \$8400 each year in fees. Under the bill, fees collected from cemeteries and cemetery associations would remain the same.

Division of Real Estate

In addition to administrative duties associated with the affidavits referred to in the previous sections, the Division of Real Estate is given further rights and responsibilities under the provisions of the bill. The Division, with the advice and consent of the Cemetery Dispute Resolution Commission, may revoke the registration of any cemetery that violates sections 1721.21 or 1721.211, or sections 4767.02 to 4767.04 of the Revised Code. It may also subpoena cemetery personnel to attend hearings before the Commission and adopt, amend, and rescind rules governing minimum maintenance standards for cemeteries.

The sale of assets or stock of a cemetery can be prohibited by the Division by refusing to issue a registration certificate to the purchaser until audited financial statements have been received. In addition, the Division is given the authority to subpoena cemetery personnel to attend hearings before the Cemetery Dispute Resolution Commission and can adopt, amend, and rescind rules governing minimum standards for cemeteries.

The bill also requires the Division to provide one investigator and two administrative assistants who shall provide services only regarding matters before the Cemetery Dispute Resolution Commission. Since the Division already employs one investigator and two administrative assistants in their Cemetery Section, this provision appears to simply codify existing practice. However, the Division estimates that they will need to hire two additional staff persons in order to comply with the provisions of the bill.

The Division will incur additional expenses due to the administrative duties and staffing needs resulting from the provisions contained in this bill. They will also lose a minimal amount of fee income by the elimination of the limited real estate brokers and limited real estate salesperson subcategories (although they will also reduce expenses associated with the examination and licensing of these brokers and salespersons). It is not known if the Division would cover these expenses in the rulemaking process by instituting filing and other assorted fees for cemeteries in order to comply with these added responsibilities.

Cemetery Dispute Resolution Commission

In addition, the bill requires the Cemetery Dispute Resolution Commission to provide a written report to the Governor, the Speaker of the House of Representatives, and the President of the Senate on the effectiveness of the Ohio Cemetery Law. The report must be provided within two years after the effective date of the bill and must include recommendations for modification of the Ohio cemetery law in light of consumer complaints and industry problems. Since the Division of Real Estate within the Department of Commerce provides the Commission with meeting space, staff services, and other technical assistance, the division will incur minimal additional expenses related to the requirement of this new report.

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