



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 419 of the 131st G.A. (LSC 131 2067-8) **Date:** April 13, 2016
Status: In House Health and Aging **Sponsor:** Reps. Sears and Ginter

Local Impact Statement Procedure Required: No

Contents: Regarding the disposition of fetal remains from abortions

State Fiscal Highlights

- State government-owned hospitals may experience an increase in costs for burial, cremation, or incineration. However, the number of abortions performed in these hospitals each year is small; thus, any costs should be minimal.
- The Ohio Department of Commerce might realize a gain in fee revenue if burial permits are needed.
- The Ohio Department of Health (ODH) may experience an increase in survey costs to ensure facilities that perform abortions are in compliance with the bill.
- ODH may experience a minimal increase in administrative costs to adopt rules and to create a detachable supplemental form to the informed consent form required under the bill.
- ODH and/or the Attorney General could experience an increase in administrative costs if any injunctions are sought.

Local Fiscal Highlights

- Local government-owned hospitals may experience an increase in costs for burial, cremation, or incineration. However, the number of abortions performed in these hospitals each year is small; thus, any costs should be minimal. There could also be additional administrative duties associated with maintaining the required supplemental form.
- Local registrars of vital statistics, which include local health departments, could incur additional administrative costs and collect additional revenue if burial permits are needed.
- The appropriate county prosecuting attorney or city or township director of law could experience an increase in administrative costs if any injunctions are sought.

Detailed Fiscal Analysis

The bill removes current law requiring the Ohio Department of Health (ODH) to adopt rules relating to the humane disposition of the product of human conception. Instead, the bill requires ODH to adopt rules that require any facility authorized to perform abortions or any person or entity that contracts with the facility to dispose of fetal remains it possesses in one of the following methods: interment, cremation, or incineration. This bill also requires ODH to adopt rules which establish guidelines for the incineration of fetal remains, including whether the person or entity incinerating the fetal remains shall incinerate a fetus individually or shall incinerate more than one fetus at a time. In addition, ODH must adopt rules to create a detachable supplemental form to the informed consent form described in R.C. 2317.56 which meets the following requirements: (1) indicates whether the pregnant woman has indicated a preference as to the method of disposal of the fetal remains and the preferred method selected, (2) provides for the signature of the physician who is to perform or induce the abortion, and (3) provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature. The rules must also provide that the health care facility must file the form with the local registrar or sub-registrar of vital statistics for purposes of obtaining a burial permit if the pregnant woman has indicated burial or cremation as the preferred method of disposal. ODH may experience a minimal amount of administrative costs to adopt these rules and to create the required supplemental form.

Currently, ODH is responsible for conducting on-site inspections/surveys of ambulatory surgical centers for compliance with state and federal rules and regulations. If ODH needs to ensure compliance with the bill's requirements regarding fetal disposition, ODH could do so through the current survey process at minimal additional costs. However, ODH does not license or survey hospitals. According to ODH, 115 hospitals in Ohio provide obstetrics and gynecology units or maternity units. The cost to survey each of these hospitals is estimated to be approximately \$600 per hospital.

Government-owned hospitals may experience an increase in costs as a result of the rules adopted by ODH. Government-owned hospitals could experience an increase in costs to pay for interment, cremation, or incineration of remains. However, less than 0.4% of abortions in Ohio were performed in hospitals in 2014.¹ This percentage includes abortions performed in all hospitals in Ohio, both government-owned and nongovernment-owned, so the percentage of abortions performed in government-owned hospitals² would be smaller. Thus, LSC assumes that burial, cremation, or

¹ According to ODH's report entitled "Induced Abortions in Ohio," 84 of the total 21,186 abortions were performed in hospitals in 2014. In 2013, 89 of the total 23,216 abortions were performed in hospitals and in 2012, 112 of the total 25,473 abortions were performed in hospitals.

² According to ODH's hospital registry, there are currently 15 government-owned hospitals.

incineration costs to government-owned hospitals should be minimal. In addition, there might be additional administrative duties associated with collecting and maintaining the supplemental form.

As a result of the bill, local registrars of vital statistics, which include local health departments, could incur additional administrative costs and collect additional revenue associated with the issuance of burial permits. A portion of any burial permit fee revenue would be deposited in the state treasury to the credit of the Ohio Department of Commerce. Government-owned hospitals could also incur additional costs to obtain burial documents. However, any such costs would be negligible.

Either the Director of Health or a government attorney may apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of the rules. The bill states that this action is an additional remedy not dependent on the adequacy of the remedy at law. Additionally, the bill states that none of the bill's provisions shall be construed to limit other laws, including the law governing fetal death certificates. As a result, it is possible that ODH, the Attorney General, appropriate county prosecuting attorney or city or township director of law, and the court of common pleas could experience an increase in administrative costs if any injunctions are sought.

The bill also states that none of the bill's provisions or rules adopted under the bill shall prevent a pregnant woman from submitting tissue samples from fetal remains for pathological testing. Tissue samples that have undergone pathological testing shall be exempt from the rules regarding the disposition of fetal remains.

Synopsis of Fiscal Effect Changes

The substitute bill, LSC 131 2067-8, requires ODH to adopt rules that require any facility authorized to perform abortions or any person or entity that contracts with the facility to dispose of fetal remains it possesses in one of the following methods: interment, cremation, or incineration. The As Introduced version of the bill required the Director of Health to adopt rules requiring any facility authorized to perform abortions to only dispose of the product of human conception in a manner limited to burial or cremation, or by an approved hospital type of incineration.

The substitute bill requires ODH to adopt rules to create a detachable supplemental form to the informed consent form which meets the following requirements: (1) indicates whether the pregnant woman has indicated a preference as to the method of disposal of the fetal remains and the preferred method selected, (2) provides for the signature of the physician who is to perform or induce the abortion, and (3) provides for a medical identification number for the pregnant woman but does not provide for the pregnant woman's printed name or signature. As a result, ODH could incur additional minimal administrative costs to create the detachable supplemental form, as compared to the As Introduced version of the bill. In addition,

public hospitals might have some additional administrative costs associated with maintaining the form.

The substitute bill also requires that rules must provide that the health care facility must file the detachable supplemental form with the local registrar or sub-registrar of vital statistics for purposes of obtaining a burial permit if the pregnant woman has indicated burial or cremation as the preferred method of disposal. While the As Introduced version of the bill did not specifically require a facility to obtain a burial permit, LSC assumed in its Fiscal Note that a permit would be required.³ As a result, there are no changes in the fiscal effect regarding this provision.

The substitute bill specifies that either the Director of Health or a government attorney may apply to the court of common pleas for temporary or permanent injunctions restraining a violation or threatened violation of the rules. The As Introduced version of the bill did not include this provision. As a result, it is possible that ODH, the Attorney General, appropriate county prosecuting attorney or city or township director of law, and the court of common pleas could experience an increase in administrative costs if any injunctions are sought.

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³ Continuing law prohibits a person in charge of any premises in which interments or cremations are made from interring or cremating a body, unless it is accompanied by a burial permit.