



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Alyssa Bethel

Sub. H.B. 168*

132nd General Assembly
(As Reported by H. Finance)

Reps. Stein, Bocchieri, Brenner, Hambley, LaTourette, Seitz, Arndt, Carfagna, O'Brien

BILL SUMMARY

Cemetery Law

- Establishes the Cemetery Grant Program to be administered by the Division of Real Estate in the Department of Commerce for the purpose of providing funds to cemeteries to defray the costs of exceptional maintenance or training cemetery personnel in the maintenance and operation of cemeteries.
- Creates the Cemetery Grant Fund to be used for the Cemetery Grant Program, appropriates \$100,000 to the Fund, and requires the Division to deposit into the Fund \$1 of each \$2.50 burial permit fee the Division receives.
- Requires a cemetery to provide reasonable maintenance of cemetery property and of all lots, graves, mausoleums, scattering grounds, and columbaria in the cemetery.
- Requires a cemetery to maintain electronic or paper records about interment, entombment, or inurnment right owners and records indicating a deceased's name, place of death, and date and location of interment, entombment, or inurnment.
- Requires a cemetery to submit, with its annual registration application with the Division, its rules and regulations, a copy of its endowment care trust fund agreement and preneed cemetery merchandise and services trust fund agreement, and proof that individual trustees are bonded or insured.

* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Modifies the annual expiration of each cemetery's registration to now occur on September 30 each year rather than June 30 as under current law.
- Requires a cemetery to place in trust the funds that continuing law requires the cemetery to retain under a preneed cemetery merchandise and services contract.
- Requires individual trustees for endowment care trusts and preneed cemetery merchandise and services trusts to be bonded by a fidelity bond rather than a corporate surety, or insured under an insurance policy.
- Requires trustees to hold and invest funds in an endowment care trust or preneed cemetery merchandise and services trust in accordance with the Ohio Uniform Prudent Investor Act, if the instrument that creates the trust so provides.
- Requires the Superintendent of the Division of Real Estate to establish and maintain an Investigation and Audit Section to conduct investigations of cemeteries, and requires the Section to audit the financial records of a cemetery to ensure compliance for endowment care trusts and preneed cemetery merchandise and services trusts.
- Requires the Section to maintain confidentiality of information and documents the Section obtains or creates, and provides that such information and documents are not subject to disclosure as public records.
- Allows the Superintendent to issue a registration to the purchaser of an existing cemetery if the purchaser submits the purchaser's agreement with the seller (required under continuing law) that provides for the continued preservation of the endowment care trust funds and preneed contract moneys.
- Requires the Superintendent generally to administer the Cemetery Registration Law, and eliminates the current law requirement that the Superintendent adopt, amend, and rescind rules under the Administrative Procedure Act to carry out the Law.
- Allows the Division to investigate a cemetery that has ceased operation in order to appoint a temporary receiver or trustee.
- Expands the subpoena authority of the Superintendent and Cemetery Dispute Resolution Commission.
- Allows any person adversely affected by the unlawful action of a cemetery that is not registered but that is required to be registered to file a complaint with the Division, whereas current law allows such only for registered cemeteries.

- Defines "human remains" for purposes of the law governing cemetery associations and cemetery registration.

Board of Embalmers and Funeral Directors

- Notwithstanding Ohio's Open Meetings Law to allow the Board of Embalmers and Funeral Directors to suspend a license or permit, in cases where the licensee or permit holder presents a danger of immediate and serious harm to the public, by utilizing a telephone conference call to review the allegations and take a vote.
- Prohibits any person from engaging in cremation unless the person holds an Ohio crematory operator permit.
- Prohibits any person from engaging in the business or profession of funeral directing, engaging in embalming, or operating a crematory or performing cremation with a lapsed license.
- Changes the degree of mental culpability from purposely to recklessly for violations of the embalmers, funeral directors, and crematory licensing laws for which the board may suspend, revoke, refuse to grant or refuse to renew a license or permit, or may require the license or permit holder take corrective action.
- Allows a coroner to order a funeral home to hold a body rather than make disposition of the body within 30 days after taking custody of the body, as required under continuing law.
- Specifies that a preneed funeral contract seller may collect the initial service fee from a purchaser who is paying installments only after all the installments have been paid.
- Specifies that a quorum of the Board of Embalmers and Funeral Directors, which consists of four members under continuing law, must contain three members who are funeral directors rather than three members who are funeral directors and embalmers

TABLE OF CONTENTS

Cemetery Grant Program.....	4
Cemetery maintenance requirement	4
Registration.....	5
Funds held in trust	5
Investigation and Audit Section	6
Transfer of cemetery ownership.....	7
Superintendent of Division of Real Estate	7
Receiver or trustee when cemetery ceases operation	7



Subpoena power.....	8
Miscellaneous	9
Board of Embalmers and Funeral Directors	9

CONTENT AND OPERATION

Cemetery Grant Program

The bill establishes the Cemetery Grant Program to be administered by the Division of Real Estate in the Department of Commerce for the purpose of providing grants to registered cemeteries to defray the costs of exceptional cemetery maintenance or training cemetery personnel in the maintenance and operation of cemeteries. For profit cemeteries are not eligible to receive grants under the Program; the Division must advance grants under the Program as provided by rules adopted by the Ohio Cemetery Dispute Resolution Commission under the Administrative Procedure Act.

The Cemetery Grant Fund created under the bill initially is appropriated \$100,000, and the bill requires the Division to deposit into the Fund \$1 of each \$2.50 burial permit fee the Division receives. The Division may provide grants each fiscal year totaling up to 80% of the amount appropriated to the Fund in that fiscal year. The Director of Commerce is allowed to increase this percentage by rule if the total amount of funds generated exceeds the amount of funds the Division needs to administer the Program; the Director may later decrease the percentage but not below 80%.¹

Cemetery maintenance requirement

The bill requires cemeteries to provide reasonable maintenance of cemetery property and of all lots, graves, mausoleums, scattering grounds, and columbaria in the cemetery. The Division and Commission determine whether a cemetery is reasonably maintained by considering the size and type of cemetery; the extent and use of available financial resources; the contractual obligations for care and maintenance of the cemetery; the standard of maintenance of similarly situated cemeteries; and the suggested maintenance guidelines the Commission publishes under continuing law. A cemetery that is dedicated as a nature preserve must provide reasonable maintenance in accordance with the regulations of the cemetery or the master plan governing the cemetery. The bill specifies that a cemetery may not provide maintenance in a way that precludes the exercise of lawful rights by the owner of an interment, inurnment, or entombment right, or by the decedent's immediate family or other heirs in accordance with the rules and regulations of the cemetery or other agreement of the cemetery.

¹ R.C. 3705.17, not in the bill, 4767.10, R.C. 4767.02(B)(3), and Section 3.



The bill also requires cemeteries to maintain electronic or paper records about interment, entombment, or inurnment right owners and interment, entombment, or inurnment records indicating the deceased's name, place of death, and date and location of the interment, entombment, or inurnment in the cemetery's office. Electronic records must be true copies of original documents.²

A cemetery that violates the reasonable maintenance requirement may be subject to investigation by the Division and Commission under the existing process for investigating violations.³

Registration

The bill requires a cemetery to submit additional items with its annual registration application with the Division. Under current law, a cemetery must submit general information including its location and financial information; the bill requires that a cemetery additionally submit its rules and regulations, a copy of its endowment care trust fund agreement and preneed cemetery merchandise and services trust fund agreement, and proof that individual trustees are bonded or insured. Information provided under current law must be updated within 30 days of any change to the information. Any revision to the additional items required under the bill must be provided with the cemetery's annual registration renewal. And, rather than requiring a cemetery to provide its most recent annual report as under current law, the bill requires a cemetery to provide its financial statement for the previous fiscal year.⁴

A cemetery's annual registration expires each year on June 30 under current law; the bill changes the annual expiration date to September 30.⁵

The bill expressly requires the Commission to adopt rules to establish procedures for cemetery registration and annual renewal.⁶

Funds held in trust

Continuing law requires cemeteries to retain a certain amount of moneys received under preneed cemetery merchandise and services contracts (110% of the seller's actual cost, or 30% of the seller's retail price of merchandise and 70% of the retail

² R.C. 4767.06(H) and 4767.09.

³ R.C. 4767.05(C)(5), 4767.07, and 4767.08(A).

⁴ R.C. 4767.04.

⁵ R.C. 4767.03(C).

⁶ R.C. 4767.06(A)(10).

price of services to be provided under the contract). The bill now requires that these moneys be held in a trust,⁷ as is the case under continuing law for the funds a cemetery maintains in its endowment care trust.⁸ Under current law, if individuals serve as trustees for the endowment care trust or the preneed contract funds being retained, the individuals must be bonded by a corporate surety for at least the amount for which the individuals are responsible. The bill modifies this to require that the trustees be bonded by a fidelity bond instead of a corporate surety, or be insured under an insurance policy.⁹ And, the bill requires the trustees to hold and invest funds in an endowment care trust or preneed cemetery merchandise and services trust in accordance with the Ohio Uniform Prudent Investor Act,¹⁰ if the instrument creating the trust so provides.¹¹ Current law requires that the funds be held and invested in accordance with Ohio law generally governing trust investments by a fiduciary.¹² Finally, the bill expressly requires the Commission to adopt rules for conducting audits of a cemetery's financial records to ensure the cemetery complies with Ohio law regarding endowment care trusts and preneed cemetery merchandise and services trusts.¹³

Investigation and Audit Section

The bill requires the Superintendent of the Division of Real Estate in the Department of Commerce to establish and maintain an Investigation and Audit Section to conduct investigations of cemeteries; the Division has authority to conduct investigations under continuing law.¹⁴ The Section also must audit the financial records of a cemetery at least every five years to determine whether they are complying with the requirements for endowment care trusts and preneed cemetery merchandise and services trusts.¹⁵ The Section's investigators, auditors, and other personnel must keep

⁷ R.C. 1721.211(C)(1).

⁸ R.C. 1721.21(C).

⁹ R.C. 1721.21(E) and 1721.211(C)(2) and (E). The insurance policy at least must cover the individuals for the amount for which the individuals are responsible, less any deductible. For instance, if the individuals are responsible for \$1 million, and the insurance policy deductible is \$100,000, the individuals must be insured for at least \$1.1 million.

¹⁰ Chapter 5809. of the Revised Code.

¹¹ R.C. 1721.21(E) and 1721.211(B).

¹² R.C. 2109.37 and 2109.371, not in the bill.

¹³ R.C. 4767.06(A)(9).

¹⁴ R.C. 4767.07.

¹⁵ R.C. 4767.02(B)(11). Public cemeteries are subject to audit by the Auditor of State at least once every two fiscal years. R.C. 117.11, not in the bill.



confidential any information obtained during an investigation, inspection, audit, or other inquiry, and any report, documents, or work product the Division creates. The information and other items are not subject to disclosure as public records under the Public Records Act.¹⁶

Transfer of cemetery ownership

When the ownership of a cemetery is transferred from one party to another, current law requires: (1) an audit of the cemetery's funds held in the endowment care trust and the moneys retained under a preneed cemetery merchandise and services contract, and (2) the buyer and seller to formulate an agreement that provides for the continued funding of the cemetery's endowment care trust and preneed cemetery merchandise and services contract retained funds.¹⁷ The Superintendent cannot issue a registration certificate to the buyer of the cemetery until the Superintendent receives financial statements audited by a CPA (certified public accountant) showing that the cemetery has properly deposited and maintained funds for its endowment care trust and the preneed cemetery merchandise and services contracts as required.¹⁸ The bill provides that the Superintendent may issue a registration if the Superintendent receives *either* the financial statements, as under current law, or the buyer and seller's agreement regarding the maintenance of the endowment care trust funds and contract moneys.¹⁹

Superintendent of Division of Real Estate

Rather than requiring the Superintendent to adopt, amend, and rescind rules under the Administrative Procedure Act to carry out the Cemetery Registration Law as under current law, the bill requires the Superintendent generally to administer the Law, and to issue orders necessary to implement the Law.²⁰

Receiver or trustee when cemetery ceases operation

The bill allows the Division, upon receipt of information that the owner or person responsible for the operation of a cemetery has ceased operation of that cemetery, to investigate for purposes of determining the cemetery's current status.

¹⁶ R.C. 149.43, not in the bill, and 4767.02(C).

¹⁷ R.C. 4767.06(G).

¹⁸ R.C. 1721.21 (endowment care trust) and 1721.211 (preneed cemetery merchandise and services contracts).

¹⁹ R.C. 4767.02(B)(10).

²⁰ R.C. 4767.02(B)(1) and (2).



If the Division finds evidence that the cemetery has ceased operation and a municipal corporation or township has not assumed day-to-day management of the cemetery, the Division may apply to the court of common pleas of the county in which the cemetery is located for appointment of a temporary receiver or trustee. The order appointing the temporary receiver or trustee must order the trustee or trustees of the endowment care trust of the cemetery to make distributions to the receiver or trustee.

The receiver is paid only from the income of interest and dividends in the endowment care trust; the receiver may not invade the principal or capital gains of the trust.²¹

Subpoena power

The bill elaborates upon the subpoena authority of the Superintendent and Commission. Current law allows the Commission chairperson or vice-chairperson to administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other forms of evidence.²² When investigating complaints and conducting investigations, the Superintendent may issue subpoenas and compel the production of books, papers, records, and other forms of evidence after consulting with a majority of the Commission members.²³ Finally, with the Commission's advice and consent, the Division may subpoena cemetery personnel to attend hearings before the Commission.²⁴ The bill eliminates the latter two items, and provides general subpoena power to the Superintendent and Commission as described below.

Under the bill, the Commission or Superintendent may compel by order or subpoena the production of any book, paper, or document in relation to any matter over which the Commission or Superintendent has jurisdiction and that is the subject of inquiry and investigation by the Commission or Superintendent, and may compel the attendance of witnesses to testify during hearings for complaints.²⁵ The Commission and Superintendent may administer oaths, compel the attendance of witnesses, and compel the production of any book, paper, or document in the same manner a county judge may. A sheriff or constable may serve the subpoena or service may be made by certified mail, return receipt requested; the subpoena is considered served on the date delivery is made or the date the recipient refuses to accept delivery. Witnesses who

²¹ R.C. 4767.11.

²² R.C. 4767.05(C).

²³ R.C. 4767.08(D).

²⁴ R.C. 4767.02(B)(9) under current law.

²⁵ R.C. 4767.07(C).

appear before the Commission or Superintendent receive a daily amount of \$6 (half day) or \$12 (full day) and mileage reimbursement at \$.505 per mile.²⁶ If any person does not comply with a subpoena, the Commission or Superintendent may ask the court of common pleas to order the person to comply with the subpoena. If any person does not comply with the court's request, the court, on motion supported by proof, may order an attachment for contempt to be issued against the person. If the person is brought before the court by virtue of the attachment, and if upon a hearing the disobedience appears, the court may order the offender to be committed and kept in close custody.²⁷

Miscellaneous

Current law allows any person adversely affected by the unlawful action of a *registered* cemetery to file a complaint with the Division. The bill expands this to include any cemetery that is not registered but that is required to be registered.²⁸

The bill provides a definition for "human remains," a term used in various provisions governing cemetery associations and cemetery registration. The definition is "any part of the body of a deceased human being, in any stage of decomposition or state of preservation, or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition."²⁹

The bill updates a reference to the former Ohio Association of Cemetery Superintendents and Officials to reflect the Association's merge into what is now the Ohio Cemetery Association.³⁰

Board of Embalmers and Funeral Directors

The bill notwithstanding Ohio's Open Meetings Law to allow the Board of Embalmers and Funeral Directors to suspend a license or permit, in cases where the licensee's or permit holder's continued practice presents a danger of immediate and serious harm to the public, by utilizing a telephone conference call to review the allegations and take a vote. Under Open Meetings Law, all meetings of a public body, including the Board, must be open to the public and members must be present in person to be considered present at the meeting, to be considered present for quorum

²⁶ If two or more witnesses travel together in the same vehicle, the mileage fee is paid to only one of those witnesses, but the witnesses may agree to divide the fee among themselves in any manner.

²⁷ R.C. 4767.021.

²⁸ R.C. 4767.07(A).

²⁹ R.C. 1721.21(A)(7) and 4767.01(A).

³⁰ R.C. 4767.05.



purposes, and to vote.³¹ And, any formal action taken by a public body is invalid unless adopted in an open meeting.³²

The bill prohibits any person from engaging in cremation unless the person holds an Ohio crematory operator permit,³³ and specifies that no person may engage in the business or profession of funeral directing, engage in embalming, or operate a crematory or perform cremation with a lapsed license.³⁴

The bill changes the degree of mental culpability from purposely to recklessly for violations of the embalmers, funeral directors, and crematory licensing laws for which the board may suspend, revoke, refuse to grant or refuse to renew a license or permit, or may require the license or permit holder take corrective action.³⁵

Continuing law requires a funeral home to make disposition of a dead body not later than 30 days after taking custody of the body unless the person with the right of disposition orders otherwise. The bill allows a coroner to order otherwise as well.³⁶

The bill specifies that a preneed funeral contract seller may collect the initial service fee from a purchaser who is paying installments only after all the installments have been paid. Current law specifies that only one-half of any installments may be applied to the initial service fee and that if a contract is revoked by the purchaser, the remaining due portion of the initial service fee is no longer due and payable to the seller.³⁷ The bill also specifies that payments intended to a trustee of a preneed funeral contract trust may be made by payment to the trustee's designated depository.³⁸

The bill provides that a quorum of the board, which consists of four members under continuing law, must contain three members who are funeral directors rather than three members who are funeral directors and embalmers.³⁹

³¹ R.C. 121.22(C), not in the bill.

³² R.C. 121.22(H), not in the bill.

³³ R.C. 4717.13(A)(13).

³⁴ R.C. 4717.13(A)(14).

³⁵ R.C. 4717.14.

³⁶ R.C. 4717.13(A)(12).

³⁷ R.C. 4717.36(B).

³⁸ R.C. 4717.36(C).

³⁹ R.C. 4717.03(A).



HISTORY

ACTION

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