December 16th, 2020

Senate Judiciary Committee
HB 464, Trust Law
Written Testimony from Caressa Hughes, Assistant Vice President of Government and Industry Relations, SCI Shared Resources

Chairman Eklund, Ranking Minority Member Thomas, and members of the Senate Judiciary Committee. Thank you for the opportunity to submit written testimony on House Bill 464, Trust Laws, particularly as it relates to updating cemetery endowment care trust statute.

Service Corporation International (SCI) Shared Resources is North America's leading provider of funeral, crematory and cemetery services. Our nearly 25,000 associates serve more than 450,000 families who turn to us each year to care for their loved ones. In Ohio, we have forty-five funeral homes, crematories and cemeteries.

The bill's endowment care trust provisions address a much-needed update to Ohio's cemetery endowment care trust statute. The provisions added to the bill essentially align components of the cemetery trust statute with Ohio's existing unitrust statute for investment purposes and allows more funds and safeguards for the maintenance of private, regulated cemeteries.

Twenty other states similarly have already updated their statutes. The bill does not affect family cemeteries, nonprofit cemeteries, cemeteries operated by churches. It only addresses regulated cemeteries. Attached below is the LSC analysis of the provisions and a fact sheet on endowment care trusts and the provisions of the bill.

Through the government affairs counsel of The Success Group, we worked with all the interested parties including The Ohio State Bar Association, Department of Commerce, Ohio Township Association, Ohio Cemetery Association, and Ohio Funeral Directors Association. All are either supportive or neutral. There was no opposition to the provisions in the House of Representatives.

In closing, the endowment care trust provisions will help provide adequate care, consumer protection and more consistent and reliable investment options. We appreciate your consideration and ask for your support. Thank you.

LSC Analysis

Cemetery endowment care trusts synopsis (R.C. 1721.21)

Modifies the law regarding cemetery endowment care trusts to:

- Require cemeteries to select a distribution type and notify trustees and the Division of Real Estate.
- Establish minimum balance requirements and distribution caps for unitrust distributions.
- Require cemetery operators to report unitrust distribution percentages to the Division of Real Estate.
- Require trustees to maintain an investment policy for trust assets.
- Expand the list of allowable trust expenses to which a trust distribution can be directed.
- Allow, with some limitation, capital gains taxes to be paid from the capital gains themselves.

Amendment to Help Maintain/Protect Ohio's Regulated Cemeteries

Goal: Provide Adequate Care, Consumer Protection and a more Consistent & Reliable Investment Option

Short Explanation of the Cemetery Endowment Care Trusts Amendment:

The amendment specifically allows an optional total return method for endowment care trusts to consider and generally aligns such trusts with Ohio's Uniform Prudent Investment Act i.e. Unitrust statute. The total return provision is a simple accounting mechanism to help with the upkeep of cemeteries. Under the current rules none of the trusts' principal can be used for cemetery upkeep and maintenance; whereas using the total return method, capital gains would be reclassified not as principal but rather as income. We have sign off from Dept of Commerce, Funeral Directors Association; Ohio Cemetery Association and the Ohio Township Association. As far as we know, there is no opposition.

What is an Endowment Care Trust Fund?

Cemeteries are in existence forever, and therefore require care and maintenance forever (i.e., lawn mowing, weed trimming, maintaining walkways and common grounds). Whenever someone buys a plot in a cemetery, the law requires a small portion of that purchase to be added to that cemetery's Endowment Care Trust Fund. The idea is that the income from this small portion would be sufficient to cover the maintenance needs of that particular plot and some common space.

How Will the Makeup of a Portfolio Likely Change Using the Total Return Method?

- Instead of looking at two separate "buckets" of principal & income, total return makes distributions made on the total value of the account.
- Total return allows for the creation of broader diversification (which reduces volatility and spreads out market risk) by owning various asset classes, market capitalizations

(large, mid, small) and investment styles (value versus growth). The trust can take advantage of market growth when equities are rising in value while the excess is utilized when markets are down in value – see below.

- The law change makes it **only optional** to use the Total Return method – **NOT mandatory**.

Are There Safeguards to Protect Families and the Public in a Downturn? Absolutely. Distributions are calculated based on the % of the total return election (typically capped at 5%). Distributions are paid from Income with a transfer from principal on any amount over available Income and when income exceeds the Total Return election, the excess income remains in the endowment care fund.

Have Other States Implemented a Total Return Method for Cemetery Perpetual Care Trusts? Yes – Arizona, California, Colorado, Florida, Delaware, Georgia, Iowa, Missouri, Nevada, Oklahoma, North Carolina, Tennessee, Texas, Virginia and Washington. Indiana also passed this legislation earlier this year. As the industry and consumer groups work together on the issue, more states are likely to consider legislation in 2019—2020.

Why is The Change Needed Now? Ultimately the total return approach allows cemeteries the ability to extract enough income from their trust to provide for the ongoing care & maintenance of the cemetery without sacrificing quality & diversification of investments. Passing this legislation would create a consistent, predictable distribution approach to assist in cemetery planning and not allow inflation to erode the future value.