

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** Senate Bill 1244 (Third Edition)

**SHORT TITLE:** Amend NC Cemetery Act/Increase Fees/Bill Lee Tiers.

**SPONSOR(S):** Senator Hoyle

| <b>FISCAL IMPACT</b>  |  |                   |                           |                   |                   |
|---|--|-------------------|---------------------------|-------------------|-------------------|
|   | Yes (X)  | No ( )            | No Estimate Available ( ) |                   |                   |
|   | <u>FY 2004-05</u>  | <u>FY 2005-06</u> | <u>FY 2006-07</u>         | <u>FY 2007-08</u> | <u>FY 2008-09</u> |
| <b>REVENUES</b>   |  |                   |                           |                   |                   |
| Cemetery Commission   | No General Fund Impact – See Assumptions and Methodology                         |                   |                           |                   |                   |
| DOC/DOR   | The bill is not expected to affect the budget requirements of either department. |                   |                           |                   |                   |
| <b>EXPENDITURES</b>   |  |                   |                           |                   |                   |
| <b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> North Carolina Cemetery Commission; Department of Revenue; Department of Commerce |  |                   |                           |                   |                   |
| <b>EFFECTIVE DATE:</b> This act is effective when it becomes law. Section 10 applies to designations made on or after that date.            |  |                   |                           |                   |                   |

**BILL SUMMARY:** The proposed legislation authorizes the North Carolina Cemetery Commission to increase the cap on certain fees and makes clarifying changes to the North Carolina Cemetery Act.

Section 10 of the proposed bill would also modify the formula used to determine the enterprise tier designation of a county. The Bill Lee Act is the package of state tax incentives that was first adopted in 1996 and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment, job creation, worker training, and research/development. The credits apply to activities undertaken by specifically named industrial classifications. For many of the credits, the counties of the State are divided into five economic distress tiers based on the unemployment rate for the most recent three years, per capita income for the most recent three years, and population growth from the last decennial census to the most recent year. The lower the tier of a county, the more favorable the incentive. The proposed

bill would measure the unemployment rate, per capita income, and population change on the basis of the most recent 12 months.

**ASSUMPTIONS AND METHODOLOGY:**

**Cemetery Commission**

The North Carolina Cemetery Commission is one of the boards and commissions given administrative support through the Department of Commerce. The principal purpose of the Commission is to regulate and supervise the activities of the for-profit cemetery industry under the laws of North Carolina. The Commission is receipt-supported and receives no state General Fund appropriation.

The proposed bill affects twelve fees administered by the North Carolina Cemetery Commission. Most of the changes affect the cap associated with a fee, thus, the exact amount of additional revenue generated cannot be estimated. Currently, the Commission has a negative fund balance, thus, the fee increases are necessary for ongoing operations. The Commission will be monitoring its statutory regulations and associated revenues and the fee caps should be valid for many years.

The fees will affect licensed cemeteries, cemetery sales organizations, cemetery management organizations, cemetery brokers, and cemetery salespeople. The number of licensed cemeteries has remained constant for the past four to five years, while the number of cemetery salespeople has been trending slightly downward for the past several years. The table below shows the number of these organizations currently in North Carolina.

| <b><u>Cemetery Organization</u></b> | <b><u>Number in NC</u></b> |
|-------------------------------------|----------------------------|
| Licensed cemeteries                 | 175                        |
| Cemetery sales organizations        | 2                          |
| Cemetery management organizations   | 1                          |
| Cemetery brokers                    | 1                          |
| Cemetery salespeople                | ~600                       |

The proposed changes in fee caps will be:

| <b>Service</b>   | <b>Impacted</b>  | <b>Current Fee Cap</b> | <b>Proposed Fee Cap</b> |
|--|--|------------------------|-------------------------|
| Annual license fee   | Licensed cemeteries  | \$300                  | \$600                   |
| Inspection fee when the certificate of interment right is issued | Licensed cemeteries  | \$2                    | \$4                     |
| Inspection fee for a pre-need cemetery contract                  | Licensed cemeteries  | \$5                    | \$10                    |
| Application and filing fee                                       | Licensed cemetery applicants   | \$800                  | \$1600                  |
| Application and filing fee                                       | Licensed cemetery sales and management organization applicants           | \$400                  | \$1000                  |
| Application and filing fee                                       | Licensed cemetery broker applicants                                      | \$200                  | \$500                   |
| Annual license renewal fee                                       | Licensed cemetery sales or management organizations and cemetery brokers | \$100                  | \$600                   |
| Application and filing fee                                       | Cemetery salespeople applicants  | \$15                   | \$100                   |
| Annual license fee   | Cemetery salespeople   | \$10 / 1 yr            | \$100 / 2 yrs           |
| Application and filing fee                                       | Change of control applicants   | \$200                  | \$1600                  |

The North Carolina Cemetery Commission Board has rule-making authority to set the fees within the caps laid out in state statute. **The Commission does not intend to increase all of the fees associated with the proposed legislation, nor will they increase any of the fees to their new caps.** The table below indicates those fees that may be changed during 2004 as a result of the statutory modifications.

| Service                    | Impacted   | Proposed Fee  | Additional Revenue Generated                 |
|----------------------------|--|---------------|--|
| Annual license fee         | Licensed cemeteries  | \$350         | \$8750                                       |
| Application and filing fee | Licensed cemetery applicants   | max of \$1600 | max of \$1600<br>(one new cemetery expected) |
| Application and filing fee | Licensed cemetery sales and management organization applicants           | max of \$1000 | 0  |
| Application and filing fee | Licensed cemetery broker applicants                                      | max of \$500  | 0  |
| Annual license renewal fee | Licensed cemetery sales or management organizations and cemetery brokers | max of \$600  | max of \$2000                                |
| Application and filing fee | Cemetery salespeople applicants  | max of \$100  | cannot estimate                              |
| Annual license fee         | Cemetery salespeople   | \$50 / 2 yrs  | \$24,000                                     |
| Application and filing fee | Change of control applicants   | max of \$1600 | 0  |

The proposed legislation also increases the fee for the legal advertisement of a perpetual care fund in connection with the sale of cemetery property. Currently the fund must have \$40 per grave space, niche, or mausoleum crypt deposited in it, while the proposed change would increase the amount deposited to \$100 or 10% of the sale price per grave space, niche, or mausoleum crypt sold, whichever is greater. If a municipal, church-owned or fraternal cemetery converts to a private cemetery they must currently initially deposit \$10 per space or \$25,000, whichever is greater, for the establishment of a care and maintenance trust fund. The proposed change would increase the amount deposited to \$50 per space or \$50,000, whichever is greater. The funds in these instances go neither to the Cemetery Commission nor the owner of the cemetery, but rather to a trust fund for the perpetual care of the cemetery.

The proposed legislation also changes two penalties to administrative fees, leaving the amounts unchanged. If a cemetery company is delinquent on deposits to the perpetual care trust fund, the Commission may assess \$1 per day for each grave space, niche or mausoleum crypt sold. If a cemetery company is delinquent on providing reports on their business and financial status, the Commission may assess a late filing fee of \$25 per month. These penalties have not been assessed in the past, thus, the local school boards will see no decrease in revenue.

**Enterprise Tier Designation – Section 10**

The bill is effective for the tier determination due December 31, 2004. Thus, it would first apply to tax credits for economic activity taking place during the 2005 calendar year. For the machinery/equipment credit and the jobs credit, the taxpayer cannot claim the credit until the year following the activity year. This means that the change will first be taken during the 2006 tax year, which is equivalent to the 2006-07 state fiscal year for budget accounting purposes. The bulk of the tier-sensitive credits fall into the investment and jobs creation categories.

Under the current administrative practice, the unemployment rate calculation ends with June of the year in which the determination is made. Discussions with the Department of Commerce indicate

that the Department might consider advancing the end of the calculation period to a date closer to the determination month (December), if a legislative change is enacted.

The effect of the bill on state General Fund revenues depends on the unknown experience of individual counties for a 12-month period ending sometime in late 2004. Under the tier designation formula, a ranking is developed for each factor and the rankings are added across the three factors. The counties are then grouped into tiers based on the statutory guidelines (the lowest 10 counties will be in Tier 1, the next 15 counties will be Tier 2, etc.). Finally, there are exceptions to the general rule for certain situations in small counties with high poverty rates.

The overall impact of the proposal will be limited by the following factors:

- (1) The movement of some counties to a higher tier will be offset at least partially by the shift of other counties to a lower tier.
- (2) The unemployment and per capital income experience for the most recent 12 months is part of the current 3-year calculation.
- (3) The current law “exceptions” to the general tier rules may offset the potential movement of some counties to a lower tier.
- (4) Some of the tiers are so wide (25 counties) that a county may change ranking but remain in the existing tier.

For these reasons, it is not possible at this time to determine the impact to the State General Fund or the shift between counties. However, the factors listed above will limit the changes between tiers and the impact on the General Fund. Finally, the Bill Lee Act sunsets effective for activity taking place on or after January 1, 2006. This means that the legislation is effective only for the 2005 calendar year.

**SOURCES OF DATA:** North Carolina Cemetery Commission; Department of Revenue; Department of Commerce

**TECHNICAL CONSIDERATIONS:** N/A

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**Signed Copy Located in the NCGA Principal Clerk's Offices**