

By: Turner, Cook

H.B. No. 2371

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of burial spaces and abandoned plots in certain cemeteries in the possession and control of a municipality.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 713.009, Health and Safety Code, is amended by amending Subsection (f) and adding Subsections (f-1) and (f-2) to read as follows:

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale, except as provided by Subsection (f-1).

(f-1) A municipality that has taken possession and control of a cemetery under this section for at least 25 years may sell additional burial spaces in the cemetery if, after a public hearing, the governing body of the municipality by official action finds that:

(1) the cemetery has been consistently maintained in accordance with Section 713.011; and

(2) the sale and use of additional burial spaces in the cemetery will not endanger the public health, safety, comfort, or welfare.

(f-2) A municipality shall provide written notice of a public hearing required under Subsection (f-1). The notice must:

- 1 (1) describe the municipality's proposed action;
2 (2) identify the cemetery that is the subject of the
3 hearing by name and location;
4 (3) be published in a newspaper of general
5 circulation:
6 (A) once a week for three consecutive weeks:
7 (i) in a county in which the cemetery is
8 located; or
9 (ii) in the absence of a newspaper in that
10 county, in the neighboring county nearest to the cemetery that has a
11 newspaper of general circulation; and
12 (B) with a final date of publication that is not
13 less than one week and not more than two weeks before the date of the
14 hearing; and
15 (4) be mailed to the Texas Historical Commission not
16 less than one week before the date of the hearing.

17 SECTION 2. Subchapter A, Chapter 713, Health and Safety
18 Code, is amended by adding Sections 713.012 and 713.013 to read as
19 follows:

20 Sec. 713.012. ABANDONED PLOTS IN CERTAIN CEMETERIES IN
21 MUNICIPAL POSSESSION AND CONTROL. (a) This section applies only to
22 a cemetery for which the governing body of a municipality by
23 official action issues the findings described by Section
24 713.009(f-1).

25 (b) After notice provided in accordance with Subsection (c)
26 and a public hearing, the governing body of a municipality may by
27 official action declare a plot in a cemetery subject to this section

1 as presumed abandoned if:

2 (1) the municipality does not have any record of
3 ownership or sale of the plot;

4 (2) the plot has not been used for interment; and

5 (3) the plot is not within a family enclosure or area
6 of plots of related persons.

7 (c) A municipality shall provide written notice of the
8 public hearing required under Subsection (b) that satisfies the
9 notice requirements described by Section 713.009(f-2).

10 (d) The municipality may combine the notice and hearing
11 required under this section with the notice and hearing required
12 under Sections 713.009(f-1) and (f-2).

13 (e) A municipality has the exclusive right of sepulture in
14 an abandoned plot in a cemetery subject to this section and may
15 convey that right in the plot.

16 (f) A person may rebut the presumption of abandonment by
17 submitting to the municipality a deed, certificate of ownership,
18 bill of sale, receipt, instrument of conveyance, or other evidence
19 of ownership under which the person may claim the exclusive right of
20 sepulture in the plot in accordance with Section 711.039.

21 Sec. 713.013. APPEAL OF FINDING OF ABANDONMENT. (a) Not
22 later than the 10th day after the date the governing body of a
23 municipality declares a plot abandoned under Section 713.012, a
24 person aggrieved by the declaration or a taxpayer residing in the
25 municipality may file with a district court, county court, or
26 county court at law of the county in which the cemetery is located a
27 verified petition that states the decision is wholly or partly

1 illegal and the grounds of the illegality.

2 (b) On the filing of the petition, the court may grant a writ
3 of certiorari directed to the governing body to review the
4 governing body's decision. The writ must require the governing
5 body's return to be made and served on the petitioner not later than
6 the 10th day after the date the writ is issued, unless otherwise
7 extended by the court. Granting of the writ does not stay the
8 proceedings on appeal, but on application and after notice to the
9 governing body, the court may grant a restraining order.

10 (c) The governing body's return must be verified and
11 concisely state any pertinent facts that show the grounds of the
12 decision under appeal. The governing body is not required to return
13 the original documents on which the governing body acted but may
14 return certified or sworn copies of the documents or parts of the
15 documents as required by the writ.

16 (d) If a court determines at the hearing that testimony is
17 necessary for proper disposition of the matter, the court may take
18 evidence or appoint a referee to take evidence as directed. The
19 referee shall report the evidence to the court with the referee's
20 findings of fact and conclusions of law. The referee's report
21 constitutes a part of the proceedings on which the court makes a
22 decision.

23 (e) The court may wholly or partly reverse or affirm or
24 modify the appealed decision. The court may not assess costs
25 against the governing body unless the court determines that the
26 governing body acted with gross negligence, bad faith, or malice in
27 making the decision.

1 SECTION 3. This Act takes effect September 1, 2023.