

## **BILL ANALYSIS**

S.B. 661  
By: Carona  
Investments & Financial Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Recently enacted legislation sought to clarify various aspects of perpetual care cemetery ownership, construction, and final disposition, and revised the application process and enforcement provisions for perpetual care cemeteries. However, interested parties have identified several issues since the passage of that legislation. S.B. 661 seeks to continue to improve the oversight of perpetual care cemeteries.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas and to the Texas Funeral Service Commission in SECTION 2 of this bill.

### **ANALYSIS**

S.B. 661 amends the Health and Safety Code to authorize the Finance Commission of Texas to adopt rules and the Texas Funeral Service Commission to adopt rules, establish procedures, and prescribe forms to enforce and administer statutory provisions relating to the construction of and default on a lawn crypt section of a cemetery and relating to contract disclosures required in a sales contract for an undeveloped lawn crypt space.

S.B. 661 removes a requirement that a corporation conducting a business for cemetery purposes either be a nonprofit corporation organized in accordance with the Texas Non-profit Corporation Act or statutory provisions relating to formation of a nonprofit cemetery corporation by cemetery plot owners or be a private corporation operated for profit. The bill instead requires such a corporation to be a filing entity or foreign filing entity as defined by the Business Organizations Code. The bill specifies that the formation and governance of a nonprofit corporation for cemetery purposes is subject to statutory provisions relating to the formation of a nonprofit cemetery corporation by cemetery plot owners and relating to the rights of plot owners in a cemetery owned by a nonprofit corporation.

S.B. 661 requires an amended map or plat required to be filed with the county clerk by a cemetery organization, if a change in the shape and size of a cemetery property is made under a provision in a certificate or declaration of dedication of the property, to be filed not later than the last day of the next calendar quarter. The bill specifies that a cemetery organization that holds a certificate of authority to operate a perpetual care cemetery is not required to file an amended map or plat if the only change to the property is the placement of a cremains receptacle that contains not more than four niches on a plot or the alteration of an existing cremains receptacle on a plot and if the cemetery organization maintains records that specify the location of the cremains receptacle, as required by rules adopted by the finance commission. The bill defines "cremains receptacle" as a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains niches for cremated remains.

S.B. 661 shortens, from the 91st day to the 30th day after the date a cemetery corporation receives notice from the attorney general of a violation of statutory provisions relating to

cemeteries or perpetual care cemeteries, the deadline by which the cemetery corporation must correct the violation or forfeit its charter and the right to do business in Texas. The bill authorizes the attorney general to bring suit or quo warranto proceedings in a district court of Travis County, in addition to a district court of any county in which the violation occurred, for the forfeiture of a corporation's charter and the dissolution of the corporation if a violation is not corrected before the deadline.

S.B. 661 makes it a second degree felony offense for a person who is an individual, firm, association, corporation, or municipality or an officer, agent, or employee of an individual, firm, association, corporation, or municipality to make more than one interment in a plot in a cemetery operated by a cemetery organization without obtaining consent from each owner of the plot or for such a person to remove remains from a plot in such a cemetery without complying with statutory provisions relating to the removal of remains.

S.B. 661 requires a corporation chartered on or after September 1, 1993, and before September 1, 2013, to have a minimum of \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation on or after September 1, 2013, in addition to the required \$75,000 in minimum capital. The bill requires a corporation whose certificate of formation takes effect on or after September 1, 2013, to have a minimum of \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation.

S.B. 661 includes as a condition under which a proposed transferee of business ownership of a perpetual care cemetery who is not a certificate holder is required to file any necessary document with the secretary of state and an application for a certificate of authority with the Texas Department of Banking the condition that the proposed transferee would own more than 50 percent of the stock or other ownership or membership interest of the corporation.

S.B. 661 authorizes the banking commissioner to report a violation of law relating to perpetual care cemeteries or a final order of the banking commissioner or rule of the finance commission that has not been corrected before the 31st day after, rather than within 90 days after, the corporation operating a perpetual care cemetery receives notice of the violation to the attorney general and authorizes the attorney general to bring the required suit or quo warranto proceedings for the forfeiture of a corporation's charter and the dissolution of the corporation in a district court of Travis County as an alternative to a district court of any county in which the corporation's perpetual care cemetery is operated.

#### **EFFECTIVE DATE**

September 1, 2013.