

BILL ANALYSIS

C.S.H.B. 3265
By: Howard
Culture, Recreation & Tourism
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the definitions and procedures regarding cemeteries unnecessarily intrude on private property rights. C.S.H.B. 3265 seeks to reform the law regarding cemeteries.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3265 amends the Health and Safety Code to authorize a justice of the peace acting as coroner or medical examiner, or another person authorized to supervise the removal of remains, to investigate or remove remains in an unmarked grave contained within an abandoned, unknown, or unverified cemetery without written order of the state registrar or the state registrar's designee. The bill defines, among other terms, "abandoned cemetery" as a cemetery, regardless of whether it appears on a map or in deed records, that is not owned or operated by a cemetery organization, does not have another person legally responsible for its care, and is not maintained by any person; "unknown cemetery" as an abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records; and "unverified cemetery" as a location having some evidence of interment but in which the presence of one or more unmarked graves has not been verified by a person authorized to supervise the removal of remains or by the Texas Historical Commission.

C.S.H.B. 3265 authorizes the commission, with consent of a landowner, to investigate a suspected but unverified cemetery or to delegate the investigation to a qualified person authorized to supervise the removal of remains. The bill gives a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located, if the court orders the removal of a dedication of a cemetery and all human remains in that cemetery have not previously been removed, the option of ordering the removal of the remains from the cemetery to a municipal or county cemetery as an alternative to ordering such removal to a perpetual care cemetery. The bill requires a person who discovers an unknown or abandoned cemetery to mail, concurrently with filing the required notice with the applicable county clerk, notice to the landowner on record in the county appraisal district and specifies that the required notice is for the discovery of the cemetery.

C.S.H.B. 3265 requires a person who discovers an unverified cemetery to file notice and evidence of the discovery with the commission on a form provided by the commission and to

concurrently provide a copy of the notice to the landowner on record in the county appraisal district on whose land the unverified cemetery is located. The bill authorizes such a landowner to send a response or comments to the commission concerning the notice not later than the 30th day after the date the notice is filed. The bill requires the commission to evaluate the notice of the unverified cemetery, the evidence submitted with the notice, and the response of the landowner, if any, and to determine whether there is sufficient evidence of the existence of a cemetery. The bill requires the commission to inform the landowner if the commission determines sufficient evidence supports the existence of a cemetery and authorizes the commission under such circumstance to file notice of the existence of the cemetery with the applicable county clerk. The bill requires the commission, if it determines sufficient evidence supports a determination that a cemetery does not exist, to notify the landowner on record in the appraisal district of its determination, amend the notice to include the commission's determination, and ensure any applicable notice filed with a county clerk is corrected. The bill excludes an unverified cemetery from the applicability of statutory provisions relating to access to a cemetery or private burial grounds for which no public ingress or egress is available.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3265 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 711.001, Health and Safety Code, is amended by amending Subdivisions (1) and (1-a) and adding Subdivisions (1-b), (29), (30), (31), and (32) to read as follows:

(1) "Abandoned cemetery" means a cemetery, regardless of whether it appears on a map or in deed records, that is not owned or operated by a cemetery organization, does not have another person legally responsible for its care, and is not maintained by any person.

(1-a) "Burial park" means a tract of land that is used or intended to be used for interment in graves.

(1-b) [(1-a)] "Campus" means the area:

(A) within the boundaries of one or more adjacent tracts, parcels, or lots under common ownership;

(B) on which the principal church building and related structures and facilities of an organized religious society or sect are located; and

(C) that may be subject to one or more easements for street, utility, or pipeline purposes.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 711.001, Health and Safety Code, is amended to read as follows: Sec. 711.001. DEFINITIONS. In this chapter:

(1) "Abandoned cemetery" means a cemetery, regardless of whether it appears on a map or in deed records, that is not owned or operated by a cemetery organization, does not have another person legally responsible for its care, and is not maintained by any person.

(2) [(1)] "Burial park" means a tract of land that is used or intended to be used for interment in graves.

(3) [(1-a)] "Campus" means the area:

(A) within the boundaries of one or more adjacent tracts, parcels, or lots under common ownership;

(B) on which the principal church building and related structures and facilities of an organized religious society or sect are located; and

(C) that may be subject to one or more easements for street, utility, or pipeline purposes.

(4) [(2)] "Cemetery" means a place that is

used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves.

(5) [~~(2-a)~~] "Cemetery element" means a grave, memorial, crypt, mausoleum, columbarium, or other item that is associated with the cemetery, including a fence, road, curb, wall, path, gate, or bench and the lighting and landscaping.

(6) [~~(2-b)~~] "Cemetery broker" means a person who sells the exclusive right of sepulture for another person. The term does not include a person who:

(A) is an officer, agent, or employee of the cemetery organization in which the plot is located and who is exempt from registration under Subchapter C-1; or

(B) originally purchased the exclusive right of sepulture for personal use.

(7) [~~(3)~~] "Cemetery organization" means:

(A) an unincorporated association of plot owners not operated for profit that is authorized by its articles of association to conduct a business for cemetery purposes; or

(B) a corporation, as defined by Section 712.001(b)(3), that is authorized by its certificate of formation or its registration to conduct a business for cemetery purposes.

(8) [~~(4)~~] "Cemetery purpose" means a purpose necessary or incidental to establishing, maintaining, managing, operating, improving, or conducting a cemetery, interring remains, or caring for, preserving, and embellishing cemetery property.

(9) [~~(5)~~] "Columbarium" means a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.

(10) [~~(5-a)~~] "Cremains receptacle" means a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains niches for cremated remains.

(11) [~~(6)~~] "Cremated remains" or "cremains" means the bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

(12) [~~(7)~~] "Cremation" means the irreversible process of reducing human remains to bone fragments through extreme

heat and evaporation, which may include the processing or the pulverization of bone fragments.

(13) [~~(8)~~] "Crematory" means a structure containing a furnace used or intended to be used for the cremation of human remains.

(14) [~~(9)~~] "Crematory and columbarium" means a durable, fireproof structure containing both a crematory and columbarium.

(15) [~~(10)~~] "Crypt" means a chamber in a mausoleum of sufficient size to inter human remains.

(16) [~~(11)~~] "Directors" means the governing body of a cemetery organization.

(17) [~~(12)~~] "Entombment" means interment in a crypt.

(18) [~~(13)~~] "Funeral establishment" means a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons, either as sole owner, in copartnership, or through corporate status, are engaged or represent themselves to be engaged in the business of embalming or funeral directing.

(19) [~~(14)~~] "Grave" means a space of ground that contains interred human remains or is in a burial park and that is used or intended to be used for interment of human remains in the ground.

(20) [~~(15)~~] "Human remains" means the body of a decedent.

(21) [~~(16)~~] "Interment" means the permanent disposition of remains by entombment, burial, or placement in a niche.

(22) [~~(17)~~] "Interment right" means the right to inter the remains of one decedent in a plot.

(23) [~~(18)~~] "Inurnment" means the placement of cremated remains in an urn.

(24) [~~(19)~~] "Lawn crypt" means a subsurface receptacle installed in multiple units for ground burial of human remains.

(25) [~~(20)~~] "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.

(26) [~~(20-a)~~] "Memorial" means a headstone, tombstone, gravestone, monument, or other marker denoting a grave.

(27) [~~(21)~~] "Niche" means a space in a columbarium or cremains receptacle used or intended to be used for the placement of cremated remains in an urn or other

container.

(28) [(22)] "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.

(29) [(23)] "Perpetual care" or "endowment care" means the maintenance, repair, and care of all places in the cemetery.

(30) [(24)] "Perpetual care cemetery" or "endowment care cemetery" means a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter 712.

(31) [(25)] "Plot" means space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches.

(32) [(26)] "Plot owner" means a person:

(A) in whose name a plot is listed in a cemetery organization's office as the owner of the exclusive right of sepulture; or

(B) who holds, from a cemetery organization, a certificate of ownership or other instrument of conveyance of the exclusive right of sepulture in a particular plot in the organization's cemetery.

(33) [(27)] "Prepaid funeral contract" means a written contract providing for prearranged or prepaid funeral services or funeral merchandise.

(34) [(28)] "Remains" means either human remains or cremated remains.

(35) "Unidentified grave" means a grave that is not marked in a manner that provides the identity of the interment.

(36) "Unknown cemetery" means an abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

(37) "Unmarked grave" means the immediate area where one or more human interments are found that:

(A) is not in a recognized and maintained cemetery;

(B) is not owned or operated by a cemetery organization;

(C) is not marked by a tomb, monument, gravestone, or other structure or thing placed or designated as a memorial of the dead; or

(D) is located on land designated as agricultural, timber, recreational, park, or scenic land under Chapter 23, Tax Code.

(29) "Unidentified grave" means a grave that is not marked in a manner that provides the identity of the interment.

(30) "Unknown cemetery" means an abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

(31) "Unmarked grave" means the immediate area where one or more human interments are found that:

(A) is not in a recognized and maintained cemetery;

(B) is not owned or operated by a cemetery organization;

(C) is not marked by a tomb, monument, gravestone, or other structure or thing placed or designated as a memorial of the dead; and

(D) is located on land designated as agricultural, timber, recreational, park, or scenic land under Chapter 23, Tax Code.

(32) "Unverified cemetery" means a location having some evidence of interment but in which the presence of one or more unmarked graves has not been verified by a person described by Section 711.0105(a) or by the Texas Historical Commission.

SECTION 2. Section 711.004, Health and Safety Code, is amended.

SECTION 3. The heading to Section 711.010, Health and Safety Code, is amended.

SECTION 4. Section 711.010, Health and Safety Code, is amended.

SECTION 5. The heading to Section 711.011, Health and Safety Code, is amended.

SECTION 6. Section 711.011(a), Health and Safety Code, is amended.

SECTION 7. Subchapter A, Chapter 711, Health and Safety Code, is amended by adding Section 711.0111 to read as follows: Sec. 711.0111. NOTICE OF UNVERIFIED CEMETERY. (a) A person who discovers an unverified cemetery shall file notice and evidence of the discovery with the Texas Historical Commission on a form provided by the Texas Historical Commission, and shall concurrently provide a copy of the notice to the landowner on record in the county appraisal district on whose land the unverified cemetery is located.

(b) The landowner described by Subsection (a) may send a response or comments to the Texas Historical Commission concerning the notice not later than the 30th day after the date the notice is filed.

(c) The Texas Historical Commission shall evaluate the notice of the unverified cemetery, the evidence submitted with the notice, and the response of the landowner, if any, and shall determine whether there is sufficient evidence of the existence of a cemetery.

(38) "Unverified cemetery" means a location having some evidence of interment but in which the presence of one or more unmarked graves has not been verified by a person described by Section 711.0105(a) or by the Texas Historical Commission.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Subchapter A, Chapter 711, Health and Safety Code, is amended by adding Section 711.0111 to read as follows: Sec. 711.0111. NOTICE OF UNVERIFIED CEMETERY. (a) A person who discovers an unverified cemetery shall file notice and evidence of the discovery with the Texas Historical Commission on a form provided by the Texas Historical Commission, and shall concurrently provide a copy of the notice to the landowner on record in the county appraisal district on whose land the unverified cemetery is located.

(b) The landowner described by Subsection (a) may send a response or comments to the Texas Historical Commission concerning the notice not later than the 30th day after the date the notice is filed.

(c) The Texas Historical Commission shall evaluate the notice of the unverified cemetery, the evidence submitted with the notice, and the response of the landowner, if any, and shall determine whether there is sufficient evidence of the existence of a cemetery.

(d) If the Texas Historical Commission determines that there is sufficient evidence that a cemetery exists, the Texas Historical Commission shall file notice of the existence of the cemetery under the provisions of Section 711.011.

SECTION 8. Section 711.041, Health and Safety Code, is amended.

No equivalent provision.

SECTION 9. This Act takes effect September 1, 2017.

(d) If the Texas Historical Commission determines sufficient evidence supports the existence of a cemetery, the Texas Historical Commission shall inform the landowner and may file notice of the existence of the cemetery under Section 711.011.

(e) If the Texas Historical Commission determines sufficient evidence supports a determination that a cemetery does not exist, the Texas Historical Commission shall notify the landowner on record in the appraisal district of its determination, amend the notice to include the commission's determination, and ensure any notice filed with a county clerk under Section 711.011 is corrected.

SECTION 8. Same as introduced version.

SECTION 9. Section 712.0441(f-1), Health and Safety Code, is amended to read as follows:

(f-1) The commissioner may issue an order requiring restitution by a person if, after notice and opportunity for a hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not ordered memorials, as defined by Section 711.001 [~~711.001(20-a)~~], in compliance with the deadlines established by rules adopted under this chapter.

SECTION 10. Same as introduced version.