86R10460 EAS-F

By:  Reynolds, Zerwas, Stephenson, Miller H.B. No. 2430

A BILL TO BE ENTITLED

AN ACT

relating to requirements in a suit for the removal of human remains from a cemetery.

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

SECTION 1.  Section 711.004, Health and Safety Code, is amended by amending Subsections (c) and (d) and adding Subsection (d-1) to read as follows:

(c)  If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of a district court of the county in which the cemetery is located.  Before the date of application to the court for permission to remove remains under this subsection, notice must be given to:

(1)  the cemetery organization operating the cemetery in which the remains are interred or if the cemetery organization cannot be located or does not exist, the Texas Historical Commission;

(2)  each person whose consent is required for removal of the remains under Subsection (a); and

(3)  any other person or entity that the court subsequently requires to be served.

(d)  For the purposes of Subsection (c) and except as provided by this subsection or Subsection (d-1) or (k), personal notice must be given not later than the 11th day before the date of application to the court for permission to remove the remains, or notice by certified or registered mail must be given not later than the 16th day before the date of application. In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains from a plot, the court shall hear an application for permission to remove remains under Subsection (c) not later than the first business day after the application is made. In an emergency circumstance described by this subsection, personal notice may be given on the date the application is made.

(d-1)  If the court subsequently requires an additional person or entity to be served under Subsection (c)(3), that additional service must be performed not later than the 11th day after the date of the judge's order. Service may not be required for any court appointed representative or other court appointed official.

SECTION 2.  Sections 711.010(b) and (c), Health and Safety Code, are amended to read as follows:

(b)  On petition of the owner of the property, a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located may order the removal of any dedication for cemetery purposes that affects the property if the court finds that the removal of the dedication is in the public interest. If a court orders the removal of a dedication of a cemetery and all human remains in that cemetery have not previously been removed, the court shall order the removal of the human remains from the cemetery to:

(1)  a perpetual care cemetery; [~~or~~]

(2)  a municipal or county cemetery; or

(3)  any other place on the owner's property that the district court finds is in the public interest.

(c)  In addition to any notice required by Section 711.004, notice of a petition filed under Subsection (b) must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located.  The court may consult the Texas Historical Commission and the county historical commission in making a decision under this section [~~may intervene and become parties to the suit~~]. The court may also designate or appoint any person, party, court appointed representative, or official the court considers necessary to assist in determining whether the removal is in the public interest.

SECTION 3.  Section 711.036(b), Health and Safety Code, is amended to read as follows:

(b)  An owner of land adjacent to a cemetery for which a cemetery organization or other governing body does not exist may petition a district court of the county in which the cemetery is located to remove any human remains and the dedication for all or any portion of the cemetery. In addition to the notice required by Section 711.004, notice of a petition filed under this subsection must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The court may consult the Texas Historical Commission and the county historical commission in making a decision under this section [~~may intervene and become parties to the suit~~]. The court may also designate or appoint any person, party, court appointed representative, or official the court considers necessary to assist in determining whether the removal is in the public interest. Unknown next of kin of deceased persons buried in the cemetery shall be served by publication of a notice in a newspaper of general circulation in the county in which the cemetery is located, or if there is not a newspaper of general circulation in the county, in a newspaper of general circulation in an adjacent county. A reasonable good faith effort shall be made to remove all remains and monuments from the cemetery or that portion of the cemetery for which the dedication is to be removed.

SECTION 4.  The changes in law made by this Act apply only to a suit involving the removal of remains from an abandoned, unknown, or unverified cemetery pending in a trial court on the effective date of this Act or filed on or after that date. A suit involving the removal of remains from an abandoned, unknown, or unverified cemetery in which a final order is rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 5.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.