

BILL ANALYSIS

Senate Research Center
88R7248 LRM-F

H.B. 2371
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Local Government
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Arlington Cemetery occupies approximately 10 acres of gravesites. Multiple historical graveyards are contained within the tracts of land. In 1883, the City of Arlington was donated the current Arlington Cemetery. Seventy years later, the Arlington Cemetery Association quit-claimed its property to the City of Arlington. Due to the weakness of the quit-claim and additional tracts within the cemetery not technically acquired by Arlington, the cemeteries were considered abandoned. The Arlington Cemetery then claimed the full cemetery under the procedures of Section 713.009 of the Texas Health and Safety Code.

Although the Health and Safety Code allows municipalities and corporations to acquire abandoned cemeteries, they are then prohibited from selling additional gravesites. With the proper maintenance and safety protocols, open burial sites are being wasted due to these restrictions.

This bill grants municipalities that take control of abandoned cemeteries, and then maintain them in accordance with the Health and Safety Code for at least 25 years, the ability to sell additional gravesites within the cemetery.

Once a municipality acquires a cemetery and chooses to sell additional sites, they must hold a public hearing to describe their actions with the cemetery. The bill specifies what defines an abandoned cemetery and allows a person or group to rebut the presumption of abandonment if they have proof of ownership (through a deed, certificate of ownership, bill of sale, receipt, or other evidence).

H.B. 2371 also creates an appeal process for a person or group in petition of the municipality's decision to declare a plot abandoned.

H.B. 2371 amends current law relating to the disposition of burial spaces and abandoned plots in certain cemeteries in the possession and control of a municipality.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

(f) Creates an exception under Subsection (f-1).

(f-1) Authorizes a municipality that has taken possession and control of a cemetery under Section 713.009 (Local Possession and Control of Unkept or Abandoned Cemetery) for at least 25 years to 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 (Maintenance of Municipal Cemeteries); 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) Requires a municipality to provide written notice of a public hearing required under Subsection (f-1). Requires that the notice:

(1) describe the municipality's proposed action;

(2) identify the cemetery that is the subject of the hearing by name and location;

(3) be published in a newspaper of general circulation:

(A) once a week for three consecutive weeks:

(i) in a county in which the cemetery is located; or

(ii) in the absence of a newspaper in that county, in the neighboring county nearest to the cemetery that has a newspaper of general circulation; and

(B) with a final date of publication that is not less than one week and not more than two weeks before the date of the hearing; and

(4) be mailed to the Texas Historical Commission not less than one week before the date of the hearing.

SECTION 2. Amends Subchapter A, Chapter 713, Health and Safety Code, by adding Sections 713.012 and 713.013, as follows:

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

(b) Authorizes the governing body of a municipality, after notice provided in accordance with Subsection (c) and a public hearing, by official action to declare a plot in a cemetery subject to this section as presumed abandoned if:

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

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

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

(c) Requires a municipality to provide written notice of the public hearing required under Subsection (b) that satisfies the notice requirements described by Section 713.009(f-2).

(d) Authorizes the municipality to combine the notice and hearing required under this section with the notice and hearing required under Sections 713.009(f-1) and (f-2).

(e) Provides that a municipality has the exclusive right of sepulture in an abandoned plot in a cemetery subject to this section and is authorized to convey that right in the plot.

(f) Authorizes a person to rebut the presumption of abandonment by submitting to the municipality a deed, certificate of ownership, bill of sale, receipt, instrument of conveyance, or other evidence of ownership under which the person is authorized to claim the exclusive right of sepulture in the plot in accordance with Section 711.039 (Right of Interment in Plot).

Sec. 713.013. APPEAL OF FINDING OF ABANDONMENT. (a) Authorizes a person aggrieved by the declaration or a taxpayer residing in the municipality, not later than the 10th day after the date the governing body of a municipality declares a plot abandoned under Section 713.012, to file with a district court, county court, or county court at law of the county in which the cemetery is located a verified petition that states the decision is wholly or partly illegal and the grounds of the illegality.

(b) Authorizes the court, on the filing of the petition, to grant a writ of certiorari directed to the governing body to review the governing body's decision. Requires that the writ require the governing body's return to be made and served on the petitioner not later than the 10th day after the date the writ is issued, unless otherwise extended by the court. Provides that granting of the writ does not stay the proceedings on appeal, but on application and after notice to the governing body, the court is authorized to grant a restraining order.

(c) Requires that the governing body's return be verified and concisely state any pertinent facts that show the grounds of the decision under appeal. Provides that the governing body is not required to return the original documents on which the governing body acted but is authorized to return certified or sworn copies of the documents or parts of the documents as required by the writ.

(d) Authorizes the court, if a court determines at the hearing that testimony is necessary for proper disposition of the matter, to take evidence or appoint a referee to take evidence as directed. Requires the referee to report the evidence to the court with the referee's findings of fact and conclusions of law. Provides that the referee's report constitutes a part of the proceedings on which the court makes a decision.

(e) Authorizes the court to wholly or partly reverse or affirm or modify the appealed decision. Prohibits the court from assessing costs against the governing body unless the court determines that the governing body acted with gross negligence, bad faith, or malice in making the decision.

SECTION 3. Effective date: September 1, 2023.