

BILL ANALYSIS

H.B. 2371
By: Turner
Urban Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Arlington community members have expressed a desire to be interred at the historic Arlington Cemetery. However, the City of Arlington, which owns the cemetery, is prohibited from selling additional burial spaces. H.B. 2371 seeks to address this issue by providing certain authority for a municipality that has taken possession and control of an unkept or abandoned cemetery for at least 25 years to sell additional burial spaces in the cemetery.

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

H.B. 2371 amends the Health and Safety Code to authorize a municipality that has taken possession and control of an unkept or abandoned cemetery for at least 25 years to sell additional burial spaces in the cemetery if, after a public hearing, the municipality's governing body by official action finds the following:

- the cemetery has been consistently maintained in accordance with applicable cemetery maintenance provisions; and
- the sale and use of additional burial spaces in the cemetery will not endanger the public health, safety, comfort, or welfare.

The bill requires the municipality to provide written notice of the public hearing and sets out requirements for the notice.

H.B. 2371 authorizes the governing body, after applicable notice and a public hearing, to declare by official action a plot in the cemetery as presumed abandoned under the following circumstances:

- the municipality does not have any record of the plot's ownership or sale;
- the plot has not been used for interment; and
- the plot is not within a family enclosure or area of plots of related persons.

The bill requires the municipality to provide written notice of the public hearing that satisfies the bill's notice requirements and provides for the combination of notices and hearings. The bill grants the municipality the exclusive right of sepulture in the abandoned plot and authorizes the municipality to convey that right in the plot. The bill 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 may claim the exclusive right of sepulture in the plot.

H.B. 2371 authorizes a person who is aggrieved by the governing body's declaration of an abandoned plot or who is a taxpayer residing in the municipality, not later than the 10th day after the date of the declaration, 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. The bill authorizes the court, on the petitioner's filing, to grant a writ of certiorari directed to the governing body to review the governing body's decision. The bill requires the writ to 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. Granting of the writ does not stay the proceedings on appeal, but on application and after notice to the governing body, the court may grant a restraining order. The bill requires the governing body's return to be verified and concisely state any pertinent facts that show the grounds of the decision under appeal. The bill establishes that the governing body is not required to return the original documents on which the governing body acted but authorizes the governing body to return certified or sworn copies of the documents or parts of the documents as required by the writ.

H.B. 2371 authorizes a court that 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. The bill requires the referee to report the evidence to the court with the referee's findings of fact and conclusions of law and establishes that the referee's report constitutes a part of the proceedings on which the court makes a decision. The bill authorizes the court to wholly or partly reverse or affirm or modify the appealed decision. The bill 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.

EFFECTIVE DATE

September 1, 2023.