88R7248 LRM-F

By:  Turner, Cook H.B. No. 2371

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of burial spaces and abandoned plots in certain cemeteries in the possession and control of a municipality.

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

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

(f)  After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale, except as provided by Subsection (f-1).

(f-1)  A municipality that has taken possession and control of a cemetery under this section for at least 25 years may 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; 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)  A municipality shall provide written notice of a public hearing required under Subsection (f-1). The notice must:

(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.  Subchapter A, Chapter 713, Health and Safety Code, is amended by adding Sections 713.012 and 713.013 to read as follows:

Sec. 713.012.  ABANDONED PLOTS IN CERTAIN CEMETERIES IN MUNICIPAL POSSESSION AND CONTROL. (a) 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)  After notice provided in accordance with Subsection (c) and a public hearing, the governing body of a municipality may by official action 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)  A municipality shall provide written notice of the public hearing required under Subsection (b) that satisfies the notice requirements described by Section 713.009(f-2).

(d)  The municipality may 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)  A municipality has the exclusive right of sepulture in an abandoned plot in a cemetery subject to this section and may convey that right in the plot.

(f)  A person may 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 in accordance with Section 711.039.

Sec. 713.013.  APPEAL OF FINDING OF ABANDONMENT. (a) Not later than the 10th day after the date the governing body of a municipality declares a plot abandoned under Section 713.012, a person aggrieved by the declaration or a taxpayer residing in the municipality may 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)  On the filing of the petition, the court may grant a writ of certiorari directed to the governing body to review the governing body's decision. The writ must 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.

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

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

(e)  The court may wholly or partly reverse or affirm or modify the appealed decision. The court may not assess 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.  This Act takes effect September 1, 2023.