

SUBJECT: Regulation of cemeteries by state and local governments

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Kolkhorst, Naishtat, Coleman, J. Davis, Hopson, S. King, Laubenberg, McReynolds, Truitt, Zerwas

0 nays

1 absent — Gonzales

WITNESSES: For — Sharon Blythe, Rescue Austin Memorial Park Cemetery; Golda Foster, Tom Green County Hospital Commission; John Griggs; (*Registered, but did not testify:* Jim Bates, Funeral Consumers Alliance of Texas; David Hollingsworth; Ed Sterling, Texas Press Association, Texas Daily Newspaper Association)

Against — (*Registered, but did not testify:* Russell Allen, Texas Cemeteries Association; Paul Beaty, Steve Martin, Bill Vallie, Texas Funeral Directors Association; David Massey, Woodlawn Funeral Home and Cemetery)

On — Lawrence Oaks, Texas Historical Commission; Joe Thrash, Texas Historical Commission; (*Registered, but did not testify:* Gerron Hite, Texas Historical Commission; Chet Robbins, Texas Funeral Service Commission)

BACKGROUND: Health and Safety Code, Title 8 deals with death and the disposition of bodies, as well as cemeteries and crematoria.

DIGEST: CSHB 2927 would amend the Health and Safety Code to change the way in which cemeteries and graves were maintained and removed and the duties that apply upon the discovery of a grave. It also would expand the enforcement powers of regulatory agencies.

Regulation of cemeteries and the removal of cemeteries and graves. CSHB 2927 would amend the Health and Safety Code, sec. 711.035 to require that property be considered dedicated cemetery property if:

- one or more human burials were present on the property; or
- a dedication of the property for cemetery use was recorded in the deed records of the county where the land was located.

CSHB 2927 would amend sec. 711.036 to allow an owner of land adjacent to a cemetery for which a cemetery organization or other governing body did not exist to petition a district court to remove any human remains and the dedication for all or any portion of the cemetery. The district court could order the removal of the human remains and the dedication of the cemetery on notice and satisfactory proof that the removal was in the public interest.

In addition to other notice, notice also would have to be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery was located. The Texas Historical Commission and county historical commission would be allowed intervene and become parties to the suit. Unknown next of kin of deceased persons buried in the cemetery would have to be served notice by publication. A reasonable good faith effort would be made to remove all remains and monuments from the cemetery or that portion of the cemetery for which the dedication would be removed.

CSHB 2927 would amend sec. 711.004 to allow remains to be removed by permission of a district court if normal consent from descendants and the cemetery organization could not be obtained. Notice would be required to be given to the cemetery organization operating the cemetery or, if the cemetery organization could not be found or no longer existed, notice would be given to the Texas Historical Commission. If the remains were not reinterred, the person who removed the remains would make a record and within 30 days would have to notify the Texas Funeral Service Commission and the Department of State Health Services of the person's intent not to reinter the remains and the reason the remains would not be reinterred.

CSHB 2927 would amend sec. 711.007 to allow a district court to abate a cemetery as a nuisance and enjoin its continuance. Notice of the action would have to be given to the Texas Historical Commission and to county historical commission of the county in which the cemetery was located. The Texas Historical Commission and the county historical commission would be allowed to intervene and become parties to the nuisance suit. The district court would determine:

- whether the cemetery nuisance had to be abated by repair and restoration or by removal of the cemetery; and
- the party or parties liable for the costs associated with the abatement.

Discovery of a cemetery. CSHB 2927 would amend sec. 711.011 to require a person who discovered an unknown or abandoned cemetery to file notice with the county clerk not later than the 10 days after the discovery. The county clerk would have to send a copy of the notice to the Texas Historical Commission and would file the notice in the deed records of the county, with an index entry referencing the land on which the cemetery was discovered.

CSHB 2927 would amend sec. 711.010 to require that the owner of property on which an unknown cemetery had been discovered would not be allowed to make improvements on the property that would further disturb the cemetery until an order had been issued by the state registrar and an order had been issued by a district court. The district court would have to issue the order if the removal of the dedication of the cemetery was in the public interest.

Removal of remains. CSHB 2927 would amend sec. 711.0105 to require that the removal of remains be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner, or a professional archeologist. The person removing the remains would be required to make a good faith effort to locate and remove all human remains, any casket or other covering, and any funerary objects associated with the remains. Remains that had been moved would have to be reburied unless a court, medical examiner, coroner, other authorized official, or next of kin approved a different disposition of the remains.

Care of cemeteries and graves. CSHB 2927 would amend ch. 713 to establish regulations for the maintenance of municipal cemeteries. A municipality that operated or had jurisdiction over a public cemetery would be required to maintain the cemetery in a condition that did not endanger the public health, safety, comfort, or welfare. A municipality's duties would include:

- repairing and maintaining any fences, walls, buildings, roads, or other improvements;
- leveling or straightening markers or memorials;

- properly maintaining lawns, shrubbery, and other plants;
- removing debris, including dead flowers and deteriorated plastic ornaments; and
- promptly restoring gravesites following a burial.

CSHB 2927 would amend sec. 713.009 to require that when a district court and a nonprofit organization assumed responsibility for certain cemeteries, their plan and care for the cemetery would comply with ch. 715 regulations for care of certain historical cemeteries.

CSHB 2927 would amend secs. 713.010 and 713.025 to allow for the private care of graves by a person who had a property interest in the grave or lot or was related within the fifth degree or was a direct descendant of the decedent occupying the grave.

Private family cemeteries. Certain Health and Safety Code provisions that require family cemeteries to be located a certain distance from a municipality, depending on the size of the municipality, would not apply to private family cemeteries that were established and operating before September 1, 2009.

Enforcement. CSHB 2927 would amend sec. 711.012 to grant the Finance Commission, the Funeral Service Commission, and the Historical Commission rule-making authority to enforce and administer regulations concerning cemeteries and graves. It also would amend sec. 711.0515 to allow the attorney general to enforce by injunction any rule or order adopted by the Funeral Service Commission.

Definitions. CSHB 2927 would define “cemetery” as a place that was used or intended to be used for interment, and included a graveyard, burial park, mausoleum, or any other area containing one or more graves.

“Cemetery element” would mean a grave, memorial, crypt, mausoleum, columbarium, or other item that was associated with the cemetery, including a fence, road, curb, wall, path, gate, or bench, and the lighting and landscaping.

“Grave” would mean a space of ground that contained interred human remains or was in a burial park and that was used or intended to be used for interment of human remains in the ground.

The bill would take effect September 1, 2009.

NOTES:

Among other changes, the committee substitute differs from the bill as filed by regulating the maintenance of municipal cemeteries; allowing the attorney general to enforce by injunction any rule or order adopted by the Texas Funeral Service Commission; requiring a district court to determine the party or parties liable for the costs associated with the abatement of a cemetery nuisance; and specifying that Health and Safety Code provisions on the specific distances a cemetery must be from the boundaries of different-sized municipalities did not apply to private family cemeteries established and operating before September 1, 2009.