

BILL ANALYSIS

Senate Research Center

H.B. 2927
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns about the Texas Ranger Museum expansion project in Waco began to arise in 2007. This expansion reportedly caused disturbance to hundreds of burial sites at an adjacent historic cemetery. On September 4, 2008, Chairman Harvey Hilderbran appointed the Texas Cemeteries Subcommittee to look into allegations of state and federal law violations at the Texas Ranger Museum site. The subcommittee concluded that state statutes regulating cemeteries are disjointed, unclear, and sometimes contradictory. The subcommittee members requested the attorney general's office to work with the Texas Funeral Service Commission (TFSC) and the Texas Historical Commission (THC) to recommend language to reconcile these statutes. This bill is an effort to clarify which state agencies have jurisdiction over cemeteries, especially historic cemeteries, and to clarify legislative intent about known and unknown burials throughout the state, while crafting a more efficient reporting process for local governments and individuals that encounter such burials.

H.B. 2927 amends current law relating to the regulation of cemeteries by state and local government.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 8 (Section 711.012, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Historical Commission in SECTION 8 (Section 711.012, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTION 8 (Section 711.012, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 711.001, Health and Safety Code, by amending Subdivisions (2) and (14) and adding Subdivisions (2-a) and (20-a) to redefine "cemetery" and "grave" and define "cemetery element" and "memorial."

SECTION 2. Amends Sections 711.004(c) and (h), Health and Safety Code, as follows:

(c) Authorizes the remains, if the consent required by Subsection (a) cannot be obtained, to be removed by permission of a district court, rather than county court, of the county in which the cemetery is located. Requires that notice, before the date of application to the court for permission to remove remains under this subsection, be given to 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 (THC).

(h) Requires the person who removes the remains, if the remains are not reinterred, to make and keep a record of the disposition of the remains and, not later than the 30th day after the date the remains are removed, provide notice by certified mail to the Texas Funeral Service Commission (TFSC) and the Department of State Health Services (DSHS) of the person's intent not to reinter the remains and the reason the remains will not be reinterred. Makes a nonsubstantive change.

SECTION 3. Amends Section 711.007, Health and Safety Code, by amending Subsection (a) and adding Subsections (e) and (f), as follows:

(a) Authorizes a district court of the county in which a cemetery is located to, by order, abate the cemetery as a nuisance and enjoin its continuance if the cemetery is maintained, located, or used in violation of this chapter or Chapter 712 (Perpetual Care Cemeteries) or neglected so that it is offensive to the inhabitants of the surrounding section.

(e) Requires that notice of an action under this section be provided to THC and to the county historical commission of the county in which the cemetery is located. Authorizes THC and the county historical commission to intervene and become parties to the suit.

(f) Requires the court, in an action under this section, to determine whether the cemetery nuisance is required 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.

SECTION 4. Amends Section 711.008, Health and Safety Code, by adding Subsection (c), to provide that Subsection (a) does not apply to a private family cemetery established and operating on or before September 1, 2009.

SECTION 5. Amends Sections 711.010(a) and (b), Health and Safety Code, as follows:

(a) Prohibits the owner of property on which an unknown cemetery is discovered or on which an abandoned cemetery is located from constructing improvements on the property in a manner that would further disturb the cemetery until the human remains interred in the cemetery are removed under a written order issued by the state registrar or the state registrar's designee under Section 711.004(f) and under an order of a district court as provided by this section.

(b) Authorizes a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located, on petition of the owner of the property, to 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.

SECTION 6. Amends Subchapter A, Chapter 711, Health and Safety Code, by adding Section 711.0105, as follows:

Sec. 711.0105. METHOD OF REMOVAL OF REMAINS. (a) Requires that the removal of remains authorized under this chapter be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner, or a professional archeologist.

(b) Requires the person removing the remains to make a good faith effort to locate and remove all human remains, any casket or other covering of the remains, and any funerary objects associated with the remains.

(c) Requires that remains that have been moved be reburied unless a court, medical examiner, coroner, other authorized official, or next of kin approves a different disposition of the remains.

SECTION 7. Amends Section 711.011, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires a person who discovers an unknown or abandoned cemetery to file notice of the cemetery with the county clerk of the county in which the cemetery is located not later than the 10th day after the date of the discovery.

(c) Requires the county clerk to send a copy of the notice to THC and file the notice in the deed records of the county, with an index entry referencing the land on which the cemetery was discovered.

SECTION 8. Amends Section 711.012, Health and Safety Code, as follows:

Sec. 711.012. RULES. (a) Authorizes the Finance Commission of Texas to adopt rules to enforce and administer Sections 711.003 (Records of Interment), 711.004 (Removal of Remains), 711.007 (Nuisance; Abatement and Injunction), 711.008 (Location of Cemetery), 711.0105, 711.021 (Formation of Corporation to Maintain and Operate Cemetery), 711.022 (Formation of Nonprofit Cemetery Corporation by Plot Owners), 711.023 (Rights of Plot Owners in Cemetery Operated by Nonprofit Cemetery Corporation), 711.024 (Authority of Non-Profit Cemetery Corporation), 711.032 (Discrimination by Race, Color, or National Origin Prohibited), 711.033 (Property Acquisition by Cemetery Organization; Recording Title), 711.034 (Dedication), 711.035 (Effect of Dedication), 711.036 (Removal of Dedication), 711.038 (Sale of Plots), 711.040 (Multiple Owners of Plot), 711.041 (Access to Cemetery), 711.042 (Authority of Non-Profit Cemetery Organization), 711.052 (Criminal Penalties), 711.061 (Requirements for Lawn Crypts), and 711.062 (Request to Install Lawn Crypt in Fewer Than 10 Units) relating to perpetual care cemeteries, rather than Sections 711.032-711.035.

(b) Authorizes the Texas Funeral Service Commission to adopt rules, establish procedures, and prescribe forms to enforce and administer Sections 711.003, 711.008, 711.0105, 711.021-711.024, 711.025, 711.026, 711.027, 711.028, 711.029, 711.030, 711.031 (Rules; Civil Penalty), 711.034, 711.038, 711.041, 711.042, 711.061, and 711.062 relating to cemeteries that are not perpetual care cemeteries, rather than Sections 711.010, 711.011, 711.021-711.035.

(c) Authorizes THC to adopt rules to enforce and administer Sections 711.010 and 711.011 (Filing Record of Unknown Cemetery); and enforce and administer Sections 711.004, 711.007, 711.0105, 711.035 (Effect of Dedication), and 711.036 relating to cemeteries that are not perpetual care cemeteries.

SECTION 9. Amends Section 711.035, Health and Safety Code, by amending Subsection (d) and adding Subsection (g), as follows:

(d) Prohibits a railroad, street, road, alley, pipeline, telephone, telegraph, electric line, wind turbine, cellular telephone tower, or other public utility or thoroughfare from being placed through, over, or across a part of a dedicated cemetery without the consent of the directors of the cemetery organization that owns or operates the cemetery or at least two-thirds of the owners of plots in the cemetery.

(g) Provides that property is considered to be dedicated cemetery property if one or more human burials are present on the property or a dedication of the property for cemetery use is recorded in the deed records of the county where the land is located.

SECTION 10. Amends Section 711.036, Health and Safety Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes an owner of land adjacent to a cemetery for which a cemetery organization or other governing body does not exist to 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. Requires that notice of a petition filed under this subsection, in addition to the notice required by Section 711.004, be given to THC and to the county historical commission of the county in which the cemetery is located. Authorizes THC and the county historical commission to intervene and become parties to the suit. Requires unknown next of kin of deceased persons buried in the cemetery to 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. Requires that a reasonable good faith effort 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.

(c) Creates this subsection from existing text. Requires the court to order the removal of the human remains and the dedication on notice and proof satisfactory to the court that the removal is in the public interest.

SECTION 11. Amends Subchapter D, Chapter 711, Health and Safety Code, by adding Section 711.0515, as follows:

Sec. 711.0515. ENFORCEMENT BY ATTORNEY GENERAL; RULE OR ORDER OF TEXAS FUNERAL SERVICE COMMISSION. Authorizes the attorney general, on request of TFSC, to seek to enforce by injunction any rule or order adopted by TFSC under this chapter.

SECTION 12. Amends Sections 713.009(b), (c), (d), and (e), Health and Safety Code, as follows:

(b) Requires the district court and the nonprofit corporation to comply with the requirements of Chapter 715 (Certain Historic Cemeteries) in assuming responsibility for the cemetery.

(c) Provides that a district court, in accordance with Chapter 715, appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery.

(d) Requires that a resolution of the municipality or an order of the court under this section specify that, not later than the 60th day after the date of giving notice of a declaration of intent to take possession and control, the municipality or corporation, as appropriate, is required to present a plan to remove or repair any fences, walls, or other improvements; straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) Requires that the notice be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery, to THC, and to all interested persons by publication in a newspaper of general circulation in the municipality.

SECTION 13. Amends Section 713.010, Health and Safety Code, as follows:

Sec. 713.010. PRIVATE CARE OF GRAVES. Provides that this subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the fifth, rather than third, degree by affinity or consanguinity, as determined under Chapter 573, (Degrees of Relationship; Nepotism Prohibitions) Government Code, to, or is a direct descendant of, a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules.

SECTION 14. Amends Subchapter A, Chapter 713, Health and Safety Code, by adding Section 713.011, as follows:

Sec. 713.011. MAINTENANCE OF MUNICIPAL CEMETERIES. (a) Requires a municipality that operates or has jurisdiction over a public cemetery to maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.

(b) Provides that a municipality's responsibility to maintain a cemetery under this section includes 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 an interment.

SECTION 15. Amends Section 713.025, Health and Safety Code, as follows:

Sec. 713.025. PRIVATE CARE OF GRAVES. Provides that this subchapter does not affect the right of a person to maintain a grave or burial lot in a cemetery if the person has an interest in the grave or burial lot; or is related within the fifth, rather than third, degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in a cemetery maintained by a trustee under this subchapter.

SECTION 16. Amends Section 715.005(a), Health and Safety Code, as follows:

(a) Requires that the written plan accompanying the nonprofit corporation's petition include a description of the actions to be taken by the nonprofit corporation to restore, operate, and maintain the historic cemetery, which are required to include straightening, leveling, and resetting of memorials or embellishments in the cemetery that are a threat or danger to the public health, safety, comfort, or welfare; restoration of damaged memorials; and restoration and maintenance of cemetery elements as defined by Section 711.001.

SECTION 17. Effective date: September 1, 2009.