

BILL ANALYSIS

C.S.H.B. 2821
By: Dean
Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties are concerned that low interest rates and increased management costs have rendered the income from some perpetual care cemetery trust funds insufficient to adequately fund cemetery operations and that certain other updates to the administration of perpetual care trust funds would be beneficial. C.S.H.B. 2821 seeks to address these issues by, among other things, providing administrative law judges more flexibility in determining the penalty for a person found to be in wilful disregard of state cemetery law and requiring operators of perpetual care cemeteries to wholly own the land on which the cemetery is located.

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

C.S.H.B. 2821 amends the Health and Safety Code to replace a requirement that the trier of fact recommend to the banking commissioner of Texas after an administrative hearing in which it is found that a person's violation of statutory provisions relating to cemeteries or of a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of such provisions or rules either that the maximum permitted administrative penalty be imposed on the person or that the commissioner cancel or not renew the person's registration or permit, as applicable, with an authorization for the trier of fact to make such a recommendation. The bill requires a corporation applying for a certificate of authority to operate a perpetual care cemetery to demonstrate to the satisfaction of the commissioner that the applicant corporation wholly owns all land on which the perpetual care cemetery will be located. The bill establishes for purposes of such requirement that an applicant corporation is considered to wholly own land regardless of whether the land is subject to a mortgage, deed of trust, or other lien.

C.S.H.B. 2821 establishes that a certificate holder holding such a certificate of authority issued before September 1, 2017, that does not on that date satisfy the ownership requirement is not required to satisfy such requirement as a condition of renewal until September 1, 2022, and authorizes the commissioner to extend the period of compliance for the ownership requirement if the certificate holder files a written application for the extension in the form and manner required by the Texas Department of Banking and shows good cause for the extension. These provisions expire September 1, 2028.

C.S.H.B. 2821 defines "master trust account" as an account containing the perpetual care trust

funds of two or more certificate holders for the purpose of collective investment and administration and changes references to a common trust fund to references to a master trust account in related provisions. The bill authorizes a corporation to apply to the commissioner for temporary relief and placement of a perpetual care trust fund in a segregated interest bearing account at a Texas financial institution if the corporation has been operating a perpetual care cemetery in Texas for at least two years and has a perpetual care trust fund with a balance of less than \$100,000, the income of which is insufficient to pay trustee fees.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2821 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 711.056(a), Health and Safety Code, is amended.

SECTION 1. Same as introduced version.

SECTION 2. Section 712.0034, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

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(b) To qualify for a certificate of authority under this chapter, an applicant must demonstrate to the satisfaction of the commissioner that:

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(1) the applicant's business ability, experience, character, financial condition, and general fitness warrant the public's confidence;

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(2) the cemetery operations manager has at least two years of experience in cemetery management;

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(3) the issuance of the certificate of authority is in the public interest;

(3) the issuance of the certificate of authority is in the public interest;

(4) the applicant, a principal of the applicant, or a person who controls the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other amount imposed under this chapter or a rule adopted or order issued under this chapter; and

(4) the applicant, a principal of the applicant, or a person who controls the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other amount imposed under this chapter or a rule adopted or order issued under this chapter; and

(5) the applicant corporation:

(5) the applicant corporation:

(A) is in good standing and statutory compliance with this state;

(A) is in good standing and statutory compliance with this state;

(B) is authorized to engage in the perpetual care cemetery business in this state; ~~and~~

(B) is authorized to engage in the perpetual care cemetery business in this state; ~~and~~

(C) does not owe any delinquent franchise or other taxes to this state; and

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(D) is the sole owner of all land on which

(D) wholly owns all land on which the

the perpetual care cemetery will be located.
(c) For purposes of Subsection (b)(5)(D),
an applicant corporation is considered to be
the sole owner of land regardless of whether
the land is subject to a mortgage, deed of
trust, or other lien.

SECTION 3. Section 712.0037, Health and Safety Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) Notwithstanding Subsection (a), a
certificate holder holding a certificate of
authority issued before September 1, 2017,

is not required to satisfy the ownership
requirement under Section
712.0034(b)(5)(D) as a condition of renewal
until September 1, 2022.

The commissioner may extend the period of
compliance for the ownership requirement if
the certificate holder:

(1) files a written application for the
extension in the form and manner required
by the department; and

(2) shows good cause for the extension.

(a-2) This subsection and Subsection (a-1)
expire September 1, 2028.

SECTION 4. Section 712.021, Health and Safety Code, is amended.

SECTION 5. This Act takes effect September 1, 2017.

perpetual care cemetery will be located.
(c) For purposes of Subsection (b)(5)(D),
an applicant corporation is considered to
wholly own land regardless of whether the
land is subject to a mortgage, deed of trust,
or other lien.

SECTION 3. Section 712.0037, Health and Safety Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) Notwithstanding Subsection (a), a
certificate holder holding a certificate of
authority issued before September 1, 2017,
that does not on that date satisfy the
ownership requirement under
712.0034(b)(5)(D)

is not required to satisfy that ownership
requirement as a condition of renewal until
September 1, 2022.

The commissioner may extend the period of
compliance for the ownership requirement if
the certificate holder:

(1) files a written application for the
extension in the form and manner required
by the department; and

(2) shows good cause for the extension.

(a-2) This subsection and Subsection (a-1)
expire September 1, 2028.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.