

SUBJECT: Notification of petition to remove a cemetery dedication

COMMITTEE: Culture, Recreation, and Tourism — favorable, without amendment

VOTE: 5 ayes — Hilderbran, Kuempel, Baxter, Dukes, Dunnam
0 nays
2 absent — Gallego, Phillips

WITNESSES: For — Robert Miller
Against — None
On — Gerron Hite, Lawrence (Larry) Oaks, Texas Historical Commission

BACKGROUND: Health and Safety Code, sec. 711.010 concerns unknown or abandoned cemeteries. If an unknown or abandoned cemetery is discovered on private property, the owner of the property cannot construct improvements on the property that would disturb the cemetery until the interred human remains are removed. A property owner must obtain a written order issued by the state registrar or the registrar's designee in order for the remains to be removed.

Property dedicated as a cemetery must be used as a cemetery unless and until the dedication is removed. A property owner who has found an unknown or abandoned cemetery and who wishes to make improvements on the land may petition the district court of the county where the cemetery is located to have the cemetery dedication removed. This petition will be made *ex parte* (by one party) in the name of the property owner without naming any defendant or joinder of any other person. At this point, the court must order the removal of the dedication, and if human remains still exist on the property, the court shall order these remains to be taken to a perpetual care cemetery.

DIGEST: HB 1011 would permit, rather than require, a district court to order the removal of a cemetery dedication upon petition of a property owner who discovered an unknown or abandoned cemetery.
It would remove the provision stipulating that the petition be made *ex*

parte in the name of the owner of the property without naming any defendant in this action. Notice of this petition, in addition to any other required notice, also would be given to the Texas Historical Commission and to the historical commission of the county where the cemetery was located. These parties could intervene and become parties to this suit.

This bill would take effect September 1, 2005, and would apply only to a suit filed on or after that date.

**SUPPORTERS
SAY:**

HB 1011 would allow the Texas Historical Commission to review the impact of changing a cemetery and study possible alternatives to its removal. Cemetery preservation is important to many Texans. A cemetery serves as a directory of early residents and a connection to the past, telling stories about events and community history.

This bill could prevent a cemetery from being indiscriminately cleared and head off any potentially sensitive, or expensive, problems that might occur if a descendant stepped forward after the fact. For a variety of reasons, small older cemeteries often contain more gravesites than headstones. Under these conditions, a landowner may not realize that there are many more gravesites to be moved than initially believed. The Texas Historical Commission can help to evaluate the situation and can help in the process of discovering and appropriately moving remains.

If an historically significant cemetery were discovered, it would be important to the people of Texas and the cause of historic preservation that it be managed appropriately. This is why the Texas Historical Commission should be alerted, before possible irreversible damage occurs.

**OPPONENTS
SAY:**

The requirement to notify the Texas Historical Commission and the county historical commission would create uncertainty and could cause delays in a cemetery removal project. If a building project was postponed for the purpose of evaluating the historical significance of a site or for the purpose of searching for more remains, the owner could incur substantially higher costs.