HOUSE
RESEARCH
ORGANIZATION bill analysis

5/2/2009

HB 1031
S. Miller
(CSHB 1031 by Gattis)

SUBJECT: Maintenance by perpetual care cemeteries of roads on their property

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Deshotel, Elkins, England, Gattis, Giddings, S. Miller, Orr, Quintanilla

0 nays

3 absent — Christian, Keffer, S. Turner

WITNESSES: (*On original version:*)
For — Brad Thompson; Tab Thompson

Against — Russell Allen, Arlie Davenport, Claud Estes, Wes Killian, Texas Cemeteries Association; Jim Bates, Funeral Consumers Alliance of Texas; David Massey, Woodlawn Funeral Home & Cemetery (*Registered but did not testify*: Paul Beaty, Texas Funeral Directors Association; Rodney Molitor; Frank Seddio; Michael Wilfong)

On — Stephanie Newberg, Texas Department of Banking

BACKGROUND: Health and Safety Code, sec. 712 provides that all perpetual care cemeteries established after September 1, 2003, be licensed through the Texas Department of Banking (TDB), which also oversees their financial operations, including creation and management of the trust fund to provide for continuing maintenance and care for the cemetery. The Texas Funeral Service Commission, rather than the TDB, supervises cemeteries owned by municipalities, cities, churches, and other non-profit organizations.

Health and Safety Code, sec. 712.007 (c) requires that a corporation owning a perpetual care cemetery include in any sales contract, certificate of ownership or other document the following statement:
"This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to maintain, repair, and care for the cemetery."

DIGEST: CSHB 1031 would amend Health and Safety Code, sec. 712.007 (c) to require that the statement provided by the owner of the perpetual care cemetery state that maintenance, repairs and care of the cemetery also would include roads on the cemetery property.

CSHB 1031 also would state that the intent of the legislation would be to clarify, rather than change, existing law.

The bill would take effect on September 1, 2009.

SUPPORTERS
SAY: CSHB 1031 would provide explicit guidance to perpetual care cemeteries that roads must also be maintained as part of the general upkeep of the cemetery. It would not require upgrading original roads and would not require that gravel or caliche surfaces be paved. However, it would provide that filling potholes or repaving already paved roads would be considered an allowable use of the trust fund proceeds. Unfortunately, some cemetery owners have allowed existing roads to deteriorate to the point of being impassable in some sections of the cemetery. Those who purchase plots or have loved ones buried in a cemetery should have some reassurance that there will always be adequately maintained and drivable roads.

CSHB 1031 would properly address problems with impassable roads in any perpetual care cemetery in the state. Other perpetual care cemeteries also face problems with lack of proper maintenance and upkeep. The bill could not be tailored to a certain locality because Texas Constitution, Art 3, sec. 56, specifically forbids the Legislature from passing any local or special legislation regarding any cemeteries, grave-yards or public grounds not owned by the state.

OPPONENTS
SAY: CSHB 1031 could potentially grant TDB additional authority to micromanage trust fund maintenance budgets for perpetual cemeteries throughout the state without addressing the problems at the Erath County cemetery, which prompted this legislation. It is unfortunate that the roads in that cemetery have not been maintained, but that situation is a result of poor management practices and lack of funds. Most cemetery owners supplement trust fund maintenance budgets with other revenue, but no change in state law would make a cemetery corporation to spend more than is available from trust fund interest.

NOTES: The committee substitute deleted a provision that would have required perpetual care cemetery roads to be properly maintained and repaired.