

BILL ANALYSIS

Senate Research Center

S.B. 1630

By: Buckingham

Business & Commerce

7/27/2017

Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2009, legislative action was taken to ensure that all graves are protected by law, regardless of location, date of internment, ethnicity, and whether marked or unmarked. However, these changes have resulted in some unintended consequences. S.B. 1630 seeks to correct these issues while ensuring equal protection for all graves.

Under the current statute, a landowner is not given notice of the filing, and therefore may not have any knowledge of the filing in the county records. To solve this problem, S.B. 1630 requires concurrent notice of an unverified discovery to the landowner on record in the county appraisal district and the Texas Historical Commission (THC). This requirement would allow the landowner to provide information about features that are suspected to be human interments and prevent unnecessary filings.

Current statute does not require verification prior to filing notice with the county clerk to confirm that a suspected cemetery actually contains human burials. This allows for the misfiling of features that may appear to be human graves, but are not, thus clouding the title. S.B. 1630 addresses this issue by defining the term "unverified cemetery" to apply to cases where the presence of one or more human interments are suspected but not verified. These discoveries would then be reported to THC for evaluation.

Landowners have stated concerns about the extension of the right of access to cemeteries to unverified cemeteries. S.B. 1630 exempts unverified cemeteries from this provision.

The statute currently requires the issuance of a written order from the state registrar or its designee before remains may be removed from a cemetery. The state registrar's permit requires that an individual's name, death date, place of death, and other details be provided. This information is not available in the case of unmarked graves, which are often the graves that need to be removed. Additionally, the state registrar requires the issuance of individual orders for each burial discovery made during the course of archeological investigations. The majority of these investigations are undertaken in advance of development projects, necessitating multiple orders in advance of excavations. S.B. 1630 addresses this by allowing for the investigation and removal of remains by a professional without requiring a written order from the state registrar.

The law currently requires the reburial of graves removed from unknown or abandoned cemeteries authorized by an order by a district court to be reburied in a perpetual care cemetery. There are only about 175 perpetual care cemeteries regulated by the Texas Department of Banking, providing few locations for reburial. S.B. 1630 addresses this issue by including municipal or county cemeteries as options for reburial. (Original Author's / Sponsor's Statement of Intent)

S.B. 1630 amends current law relating to cemeteries.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 711.001, Health and Safety Code, to define "abandoned cemetery," "unidentified grave," "unknown cemetery," "unmarked grave," and "unverified cemetery" and redesignate existing Subdivisions (1) through (28) as Subdivisions (1) through (34) respectively.

SECTION 2. Amends Section 711.004, Health and Safety Code, by adding Subsection (f-1), as follows:

(f-1) Authorizes a justice of the peace acting as coroner or medical examiner under Chapter 49 (Inquests Upon Dead Bodies), Code of Criminal Procedure, or a person described by Section 711.0105(a) (relating to requiring the removal of remains to be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner, or a professional archeologist) to investigate or remove remains without written order of the state registrar or the state registrar's designee for unmarked graves contained within an abandoned, unknown, or unverified cemetery.

SECTION 3. Amends the heading to Section 711.010, Health and Safety Code, to read as follows:

Sec. 711.010. ABANDONED, UNKNOWN, OR UNVERIFIED CEMETERY.

SECTION 4. Amends Section 711.010, Health and Safety Code, by amending Subsections (a) and (b) and adding Subsection (d), 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 disturb, rather than 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) (relating to prohibiting a certain person from removing remains from a cemetery) and under an order of a district court as provided by this section, except as provided by Section 711.004(f-1).

(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. Requires the court, if a court orders the removal of a dedication of a cemetery and all human remains in that cemetery, rather than on the property, have not previously been removed, to order the removal of the human remains from the cemetery to a perpetual care cemetery or a municipal or county cemetery.

(d) Authorizes the Texas Historical Commission (THC), with consent of the landowner, to investigate a suspected but unverified cemetery or to delegate the investigation to a qualified person described by Section 711.0105(a).

SECTION 5. Amends the heading to Section 711.011, Health and Safety Code, to read as follows:

Sec. 711.011. FILING RECORD OF UNKNOWN OR ABANDONED CEMETERY.

SECTION 6. Amends Section 711.011(a), Health and Safety Code, as follows:

(a) Requires a person who discovers an unknown or abandoned cemetery to file notice of the discovery of the cemetery with the county clerk of the county in which the cemetery is located and concurrently mail notice to the landowner on record in the county appraisal district not later than the 10th day after the date of the discovery, rather than file notice of the cemetery with the county clerk of the county in which the cemetery is located.

SECTION 7. Amends Subchapter A, Chapter 711, Health and Safety Code, by adding Section 711.0111, as follows:

Sec. 711.0111. NOTICE OF UNVERIFIED CEMETERY. (a) Requires a person who discovers an unverified cemetery to file notice and evidence of the discovery with THC on a form provided by THC, and to concurrently provide a copy of the notice to the landowner on record in the county appraisal district on whose land the unverified cemetery is located.

(b) Authorizes the landowner described by Subsection (a) to send a response or comments to THC concerning the notice not later than the 30th day after the date the notice is filed.

(c) Requires THC to evaluate the notice of the unverified cemetery, the evidence submitted with the notice, and the response of the landowner, if any, and to determine whether there is sufficient evidence of the existence of a cemetery.

(d) Requires THC, if it determines sufficient evidence supports the existence of a cemetery, to inform the landowner and authorizes THC to file notice of the existence of the cemetery under Section 711.011.

(e) Requires THC, if it determines that sufficient evidence supports a determination that a cemetery does not exist, to notify the landowner on record in the appraisal district of its determination, amend the notice to include THC's determination, and ensure any notice filed with a county clerk under Section 711.011 is corrected.

SECTION 8. Amends Section 711.041, Health and Safety Code, by adding Subsection (d), to provide that this section (Access to Cemetery) does not apply to an unverified cemetery.

SECTION 9. Amends Section 712.0441(f-1), Health and Safety Code, as follows:

(f-1) Authorizes the banking commissioner of Texas (commissioner) to issue an order requiring restitution by a person if, after notice and opportunity for a hearing held in accordance with the procedures for a contested case hearing under Chapter 2001 (Administrative Procedure), Government Code, the commissioner finds that the corporation has not ordered memorials, as defined by Section 711.001 (Definitions), rather than Section 711.001 (20-a) (relating to the definition of "memorial") in compliance with the deadlines established by rules adopted under this chapter.

SECTION 10. Effective date: September 1, 2017.