

1-1 By: Turner, Cook (Senate Sponsor - Hancock) H.B. No. 2371
1-2 (In the Senate - Received from the House April 17, 2023;
1-3 April 19, 2023, read first time and referred to Committee on Local
1-4 Government; May 4, 2023, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; May 4, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the disposition of burial spaces and abandoned plots in
1-20 certain cemeteries in the possession and control of a municipality.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 713.009, Health and Safety Code, is
1-23 amended by amending Subsection (f) and adding Subsections (f-1) and
1-24 (f-2) to read as follows:

1-25 (f) After taking the action described by Subsection (d), the
1-26 municipality or corporation shall continue to maintain the cemetery
1-27 so that it does not endanger the public health, safety, comfort, or
1-28 welfare. Additional burial spaces may not be offered for sale,
1-29 except as provided by Subsection (f-1).

1-30 (f-1) A municipality that has taken possession and control
1-31 of a cemetery under this section for at least 25 years may sell
1-32 additional burial spaces in the cemetery if, after a public
1-33 hearing, the governing body of the municipality by official action
1-34 finds that:

1-35 (1) the cemetery has been consistently maintained in
1-36 accordance with Section 713.011; and

1-37 (2) the sale and use of additional burial spaces in the
1-38 cemetery will not endanger the public health, safety, comfort, or
1-39 welfare.

1-40 (f-2) A municipality shall provide written notice of a
1-41 public hearing required under Subsection (f-1). The notice must:

1-42 (1) describe the municipality's proposed action;

1-43 (2) identify the cemetery that is the subject of the
1-44 hearing by name and location;

1-45 (3) be published in a newspaper of general
1-46 circulation:

1-47 (A) once a week for three consecutive weeks:

1-48 (i) in a county in which the cemetery is
1-49 located; or

1-50 (ii) in the absence of a newspaper in that
1-51 county, in the neighboring county nearest to the cemetery that has a
1-52 newspaper of general circulation; and

1-53 (B) with a final date of publication that is not
1-54 less than one week and not more than two weeks before the date of the
1-55 hearing; and

1-56 (4) be mailed to the Texas Historical Commission not
1-57 less than one week before the date of the hearing.

1-58 SECTION 2. Subchapter A, Chapter 713, Health and Safety
1-59 Code, is amended by adding Sections 713.012 and 713.013 to read as
1-60 follows:

1-61 Sec. 713.012. ABANDONED PLOTS IN CERTAIN CEMETERIES IN

2-1 MUNICIPAL POSSESSION AND CONTROL. (a) This section applies only to
2-2 a cemetery for which the governing body of a municipality by
2-3 official action issues the findings described by Section
2-4 713.009(f-1).

2-5 (b) After notice provided in accordance with Subsection (c)
2-6 and a public hearing, the governing body of a municipality may by
2-7 official action declare a plot in a cemetery subject to this section
2-8 as presumed abandoned if:

2-9 (1) the municipality does not have any record of
2-10 ownership or sale of the plot;

2-11 (2) the plot has not been used for interment; and

2-12 (3) the plot is not within a family enclosure or area
2-13 of plots of related persons.

2-14 (c) A municipality shall provide written notice of the
2-15 public hearing required under Subsection (b) that satisfies the
2-16 notice requirements described by Section 713.009(f-2).

2-17 (d) The municipality may combine the notice and hearing
2-18 required under this section with the notice and hearing required
2-19 under Sections 713.009(f-1) and (f-2).

2-20 (e) A municipality has the exclusive right of sepulture in
2-21 an abandoned plot in a cemetery subject to this section and may
2-22 convey that right in the plot.

2-23 (f) A person may rebut the presumption of abandonment by
2-24 submitting to the municipality a deed, certificate of ownership,
2-25 bill of sale, receipt, instrument of conveyance, or other evidence
2-26 of ownership under which the person may claim the exclusive right of
2-27 sepulture in the plot in accordance with Section 711.039.

2-28 Sec. 713.013. APPEAL OF FINDING OF ABANDONMENT. (a) Not
2-29 later than the 10th day after the date the governing body of a
2-30 municipality declares a plot abandoned under Section 713.012, a
2-31 person aggrieved by the declaration or a taxpayer residing in the
2-32 municipality may file with a district court, county court, or
2-33 county court at law of the county in which the cemetery is located a
2-34 verified petition that states the decision is wholly or partly
2-35 illegal and the grounds of the illegality.

2-36 (b) On the filing of the petition, the court may grant a writ
2-37 of certiorari directed to the governing body to review the
2-38 governing body's decision. The writ must require the governing
2-39 body's return to be made and served on the petitioner not later than
2-40 the 10th day after the date the writ is issued, unless otherwise
2-41 extended by the court. Granting of the writ does not stay the
2-42 proceedings on appeal, but on application and after notice to the
2-43 governing body, the court may grant a restraining order.

2-44 (c) The governing body's return must be verified and
2-45 concisely state any pertinent facts that show the grounds of the
2-46 decision under appeal. The governing body is not required to return
2-47 the original documents on which the governing body acted but may
2-48 return certified or sworn copies of the documents or parts of the
2-49 documents as required by the writ.

2-50 (d) If a court determines at the hearing that testimony is
2-51 necessary for proper disposition of the matter, the court may take
2-52 evidence or appoint a referee to take evidence as directed. The
2-53 referee shall report the evidence to the court with the referee's
2-54 findings of fact and conclusions of law. The referee's report
2-55 constitutes a part of the proceedings on which the court makes a
2-56 decision.

2-57 (e) The court may wholly or partly reverse or affirm or
2-58 modify the appealed decision. The court may not assess costs
2-59 against the governing body unless the court determines that the
2-60 governing body acted with gross negligence, bad faith, or malice in
2-61 making the decision.

2-62 SECTION 3. This Act takes effect September 1, 2023.

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