

1-1 By: Hancock S.B. No. 2053  
1-2 (In the Senate - Filed March 9, 2023; March 21, 2023, read  
1-3 first time and referred to Committee on Local Government;  
1-4 April 17, 2023, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 17, 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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