

## **BILL ANALYSIS**

S.B. 656  
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Investments & Financial Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Corporations that are licensed as perpetual care cemeteries currently must deposit certain amounts derived from sales into a perpetual care fund. The fund is established as an irrevocable trust, and the cemetery is only allowed to use the income from that trust to pay for the ongoing maintenance needs of the cemetery with the corpus of the trust to remain untouched. However, interested parties have expressed concern that in some small cemeteries this income is insufficient to maintain the cemetery due to a combination of lower interest rates and the inability of the cemetery operator to sell more plots. S.B. 656 seeks to address this issue.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 656 amends the Health and Safety Code to authorize the banking commissioner of Texas to petition a court to modify or terminate a perpetual care trust fund under Texas Trust Code provisions governing the judicial modification or termination of trusts, and in addition to the grounds described by those provisions, to petition a court if the income from the fund is inadequate to maintain, repair, or care for the perpetual care cemetery that is the beneficiary of the fund and another source for providing additional contributions to the fund is unavailable. The bill makes the corporation for the perpetual care cemetery and the trustee of the fund necessary parties to such an action brought by the commissioner, if feasible, and prohibits a court from modifying or terminating the fund without the commissioner's consent. The bill authorizes the court, at the request or with the commissioner's consent, to order the distribution and transfer of all or a portion of the assets in the fund to a nonprofit corporation, municipality, county, or other appropriate person who is willing to accept, continue to care for, and maintain the perpetual care cemetery. The bill specifies that such a transfer does not limit the court's ability to modify or terminate the fund under an action brought by the commissioner. The bill establishes that statutory provisions governing perpetual care trust funds control over the Texas Trust Code to the extent of any conflict.

S.B. 656 includes the district court of Travis County as a venue in which the commissioner may bring a civil action against a person to enjoin a violation relating to perpetual care cemeteries.

S.B. 656 requires an emergency order issued by the commissioner on a finding of a threat of immediate and irreparable harm to the public or a person whose interests relating to a perpetual

care cemetery are protected by law to state the grounds on which the order is granted; to advise the person against whom the order is directed that the order takes effect immediately; to the extent applicable, to require the person to immediately cease and desist from the conduct or violation that is the basis of the order or take the affirmative action stated in the order as necessary to correct a condition resulting from the conduct or violation that is the basis of the order or as otherwise appropriate; to be delivered by personal delivery or sent by certified mail, return receipt requested, to the person at the person's last known address; and to notify the person that the person may request a hearing on the order by filing a written request for a hearing with the commissioner not later than the 18th day after the date the order is delivered or mailed, whichever is earlier. The bill specifies that the emergency order takes effect as soon as the person against whom the order is directed has actual or constructive knowledge of the order's issuance. The bill establishes that the order is final on the 19th day after the date the order is delivered or mailed, whichever is earlier, unless the commissioner receives a written request for a hearing by the prescribed deadline, and establishes that the order may not be appealed.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.