

## **BILL ANALYSIS**

S.B. 1402  
By: Campbell  
Investments & Financial Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties are concerned that low interest rates and increased management costs have rendered the income from some perpetual care cemetery trust funds insufficient to adequately fund cemetery operations and that certain other updates to the administration of such trust funds would be beneficial. S.B. 1402 seeks to address these issues by providing administrative law judges more flexibility in determining the consequences for a person found to be in wilful disregard of state cemetery law and requiring operators of perpetual care cemeteries to wholly own the land on which the cemetery is located.

### **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. 1402 amends the Health and Safety Code to replace the requirement that the trier of fact recommend to the banking commissioner of Texas after an administrative hearing in which it is found that a person's violation of provisions relating to cemeteries or of a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of such provisions or rules either that the maximum permitted administrative penalty be imposed on the person or that the commissioner cancel or not renew the person's registration or permit, as applicable, with an authorization for the trier of fact to make such a recommendation. The bill requires a corporation applying for a certificate of authority to operate a perpetual care cemetery to demonstrate to the satisfaction of the commissioner that the applicant corporation wholly owns all land on which the perpetual care cemetery will be located. The bill establishes for purposes of such requirement that an applicant corporation is considered to wholly own land regardless of whether the land is subject to a mortgage, deed of trust, or other lien.

S.B. 1402 establishes that a certificate holder holding such a certificate of authority issued before September 1, 2017, that does not on that date satisfy the ownership requirement is not required to satisfy such requirement as a condition of renewal until September 1, 2022, and authorizes the commissioner to extend the period of compliance for the ownership requirement if the certificate holder files a written application for the extension in the form and manner required by the Texas Department of Banking and shows good cause for the extension. These provisions expire September 1, 2028.

S.B. 1402 defines "master trust account" as an account containing the perpetual care trust funds

of two or more certificate holders for the purpose of collective investment and administration and changes references to a common trust fund to references to a master trust account in related provisions. The bill authorizes a corporation to apply to the commissioner for temporary relief and placement of a perpetual care trust fund in a segregated interest bearing account at a Texas financial institution, as that term is defined in the Finance Code, if the corporation has been operating a perpetual care cemetery in Texas for at least two years and has a perpetual care trust fund with a balance of less than \$100,000, the income of which is insufficient to pay trustee fees.

**EFFECTIVE DATE**

September 1, 2017.