

- SUBJECT:** Cemeteries operated by a nonprofit cemetery corporation
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 7 ayes — Brimer, Corte, J. Davis, Elkins, George, Solomons, Woolley
0 nays
2 absent — Dukes, Giddings
- WITNESSES:** For — Philip Bishop, Texas Cemetery Association
Against — None
- BACKGROUND:** Health and Safety Code, sec. 711.022 allows plot owners to form a nonprofit cemetery corporation and sets forth the guidelines for doing so. According to sec. 711.022(d), if the plot owners vote to incorporate, they are required to select from the plot owners a board of directors to be named in the charter.
- Health and Safety Code, sec. 711.023 states that a plot owner in a cemetery operated by a nonprofit cemetery corporation is a shareholder of the corporation. Furthermore, the plot owner also is a shareholder in any corporation that owns the cemetery. The plot owner may exercise the rights and privileges of a shareholder, regardless of whether the owner acquired title to the plot from the corporation or before the corporation was organized.
- The Texas Non-Profit Corporation Act, arts. 1396-3.01 and 1396-3.02 set forth the guidelines for forming a non-profit corporation.
- DIGEST:** CSHB 1975 would amend Health and Safety Code, sec. 711.022(d) to provide that plot owners in a cemetery owned by a nonprofit corporation are not shareholders of the corporation. To this end, CSHB 1975 also would repeal Health and Safety Code, sec. 711.023.
- Finally, CSHB 1975 would amend Health and Safety Code, sec. 711.022(d) to provide that if the plot owners voted to incorporate in accordance with the Texas Nonprofit Corporation Act, arts. 3.01 and 3.02, on formation of the

corporation, an initial board of directors composed of members named in the articles of incorporation would manage the corporation. Subsequent members of the board of directors would be selected according to the bylaws of the corporation.

CSHB 1975 would take effect September 1, 2001, and would only apply to corporations organized under Health and Safety Code, sec. 711.022, on or after September 1, 2001.

SUPPORTERS
SAY:

CSHB 1975 would address significant management problems faced by nonprofit cemetery corporations. Under current law, nonprofit cemeteries are dependent upon plot owners (i.e., shareholders) to conduct their business. This results in a decentralized, inefficient management structure. Nonprofit cemetery corporations are forced to spend limited resources on attempts to locate and notify plot owners. Furthermore, even if plot owners are located, the decision-making process frequently is complicated by competing claims to “shareholder status” among descendants of plot owners. The deficiencies inherent in the current governance structure create a disincentive for cemetery associations to incorporate.

CSHB 1975 would bring the management of nonprofit cemetery corporations in line with that of nonprofit corporations incorporated pursuant to the Texas Nonprofit Corporation Act. A board of directors, rather than shareholders, would be responsible for running the company. This would result in a formal, centralized, and continuous governance structure. This also would alleviate current problems encountered by nonprofit cemetery corporations in attempting to locate and notify plot owners, as well as resolving competing claims to plot ownership. Finally, this would create an incentive for informal cemetery associations to incorporate and become formal, legal entities.

CSHB 1975 would be limited in scope and only would apply to nonprofit cemetery corporations formed after the effective date of the bill. Furthermore, it would allow plot owners the option of incorporating as a nonprofit cemetery corporation under either the Health and Safety Code or under the Texas Nonprofit Corporation Act.

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OPPONENTS
SAY:

CSHB 1975 would not go far enough in addressing the needs of nonprofit cemetery corporations. Although the changes that would be made by CSHB 1975 would be beneficial for nonprofit cemetery corporations formed after the effective date of the bill, it still would leave hundreds of cemeteries in their current predicament. In order to fully remedy the problems encountered by these corporations, CSHB 1975 should be modified to apply retroactively to existing nonprofit cemetery corporations.

NOTES:

The companion bill, SB 1660, by Sibley, was referred to the Senate State Affairs Committee on March 14.

The committee substitute modified the filed version of HB 1975 by providing that plot owners of a cemetery organization could vote to incorporate in accordance with the Texas Nonprofit Corporation Act, rather than requiring them to do so.