

SUBJECT: Amending requirements for a suit for the removal of human remains

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave,
Smith, White

0 nays

WITNESSES: For — Samuel Collins III

Against — None

On — Michael Elliott; (*Registered, but did not testify*: Patricia Mercado-
Allinger and Jennifer McWilliams, Texas Historical Commission)

BACKGROUND: Health and Safety Code ch. 711 governs cemeteries and crematories in the
state.

Sec. 711.004 establishes rules related to the removal of human remains
from a cemetery. Remains may be removed from a plot in a cemetery with
the written consent of certain family members. If consent cannot be
obtained for the removal of a decedent's remains, the remains may be
removed by permission of a district court. Before the date of application
to the court for permission to remove the remains, notice must be given to:

- the cemetery organization operating the cemetery in which the
remains or interred or, if the cemetery organization cannot be
located or does not exist, the Texas Historical Commission (THC);
- each family member whose consent is required for the removal of
the remains; and
- any other person that the court requires to be served.

This notice must be served no later than 11 days before the date of the
application to the court or no later than 16 days before that date if notice is
given by certified or registered mail.

Under sec. 711.010, an owner of property that contains an unknown or abandoned cemetery may petition a district court to order the removal of any dedication for cemetery purposes and the removal of the cemetery's human remains. Notice of the petition must be given to THC and the relevant county historical commission, and THC or the county historical commission may intervene in the suit.

If the court orders the removal of the human remains and they had not previously been removed, the court must order the removal of the human remains to a perpetual care cemetery or a municipal or county cemetery.

Under sec. 711.036, an owner of property adjacent to a cemetery for which no cemetery organization or other governing body exists may petition a district court to order the removal of any cemetery dedications and human remains in the cemetery. The court is required to order the removal of the remains and dedications if the removal is found to be in the public interest. THC and the county historical commission may intervene in such a suit.

DIGEST:

HB 2430 would expand the persons and entities with whom a district court could consult in suits to determine whether human remains should be removed from certain cemeteries. The bill also would allow a court to order that remains from unknown or abandoned cemeteries could be removed to another portion of the same property.

The bill would permit a court to require that additional persons or entities be given notice of an application to remove human remains after the date the application was filed. Notice would have to be served within 11 days after the judge's order but could not be required for any court-appointed representative or official.

When considering a petition to remove any cemetery dedication or human remains under Health and Safety Code secs. 711.010 or 711.036, a district court could designate or appoint any person, party, court-appointed representative, or official necessary to assist in determining whether

removal was in the public interest. The court also could consult with the Texas Historical Commission and the county historical commission in making this decision.

On petition from the owner of property on which an unknown or abandoned cemetery was discovered or located, a court could order that the remains be removed to any other place on the owner's property that the district court found to be in the public interest.

The bill would apply to any suit involving the removal of remains from an abandoned, unknown, or unverified cemetery pending in a trial court on the bill's effective date or that was filed on or after that date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.