
Business & Financial Services Committee

HB 2919

Brief Description: Concerning family cemeteries.

Sponsors: Representative Orcutt.

Brief Summary of Bill

- Creates a family cemetery permit, issued by the Funeral and Cemetery Board (Board), to authorize the permanent disposition of the human remains of up to 10 related individuals on private property, subject to restrictions.
- Requires a written dedication of the property for cemetery purposes, which must be filed in the appropriate county recorder's office, and may be removed under the existing process for removing a property's cemetery dedication.
- Grants the Board limited rule-making authority related to administering the permit.

Hearing Date: 1/30/18

Staff: Peter Clodfelter (786-7127).

Background:

The Funeral and Cemetery Board (Board) in cooperation with the Department of Licensing (DOL), licenses and regulates cemetery authorities. It is unlawful for any corporation, co-partnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within the state except by means of a corporation duly organized for that purpose.

A cemetery authority must file a map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority must also file in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes. Any cemetery established must have deposited in an endowment care fund the sum of \$25,000 before selling any interment right.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Property dedicated for cemetery purposes is forever exempt from taxation, judgment, and other liens and executions. Dedication may be removed from all or any part of the property by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority and upon notice of hearing and proof that the following conditions are met:

- human remains were not placed in, or that all placements of human remains have been removed from that portion of the property from which dedication is sought to be removed;
- the portion of the property from which dedication is sought to be removed is not being used for placement of human remains; and
- notice of the proposed removal of dedication has been given in writing to both the Board and the Department of Archaeology and Historic Preservation.

The notice must be given at least 60 days before filing the proceedings in superior court. The notice of the proposed removal of dedication must be recorded with the auditor or recording officer of the county where the cemetery is located at least 60 days before filing the proceedings in superior court. The notice of hearing must be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where the cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed.

In addition to private cemeteries regulated by the Board, any city or town may acquire, hold, or improve land for cemetery purposes, and may sell lots therein, and may provide by ordinance that a specified percentage of the proceeds therefrom be set aside and invested, and the income from the investment be used in the care of the lots.

A person has the right to control the disposition of the person's own remains without the pre-death or post-death consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

Summary of Bill:

A family cemetery permit is created, issued by the Funeral and Cemetery Board (the Board). The permit authorizes the burial and permanent disposition, on private property, of the human remains of no more than a total of 10 individuals, who are all related as provided in the act.

An application for a family cemetery permit submitted to the Board must include the following information:

- the applicant's name, address, and phone number;
- the address and legal description of the property on which the proposed family cemetery will be located;
- a legible and accurate map or plat of the property, as required by the Board, with reference points to any portion of the property to be dedicated for cemetery purpose; and
- documentation, in a manner required by the Board, that the applicant is a record owner of the property and all record owners of the property agree to dedicate a portion or all of the property for cemetery purposes.

There is no application fee, permit issuance fee, or permit transfer fee for a family cemetery permit. Once issued, a permit does not expire or require renewal. However, the Board may verify a permit holder's compliance at any time after the permit is issued and may suspend or cancel a permit for a violations of law.

Prior to issuance of a family cemetery permit, the applicant must file a map or plat of the portion of the property dedicated for cemetery purposes in the office of the recorder of the county in which all or a portion of the property is situated. The applicant must also file, for record in the county recorder's office, a written declaration of dedication of the property delineated on the plat or map as the family cemetery, dedicating the property exclusively to cemetery purposes.

Upon filing the map or plat and filing of the declaration of record, the dedication is complete and the property dedicated must be held, occupied, and used exclusively as a cemetery and for cemetery purposes, except as otherwise provided by law. Any part of the property mapped and plotted may, by order of the applicant or permit holder, be resurveyed and altered in shape and size and an amended map or plat filed, so long as the change does not disturb the interred remains of any deceased individual and the change is approved by the Board.

After property is dedicated to cemetery purposes, the dedication is not affected by the transfer, suspension, cancellation, or nonuse of the permit, by the death of the permit holder, by alienation of the property, by any encumbrance, by sale under execution, or otherwise, except as provided by law. The dedication may be removed from all or any part of the property through generally the same process for removing a cemetery dedication of property in superior court.

After dedication to cemetery purposes, and as long as the property remains dedicated for cemetery purposes, a railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility may not be laid out, through, over, or across any part of it without the consent of the permit holder, or, without the consent of the record owner or owners of the property if the permit holder is deceased, a permit was never issued, or the permit is suspended or cancelled.

The human remains of the following individuals may be buried or permanently disposed of in a family cemetery:

- the permit holder or the permit holder's spouse or registered domestic partner;
- issue of the permit holder or of the permit holder's spouse or registered domestic partner;
- sibling, half-sibling, or stepsibling of the permit holder or of the permit holder's spouse or registered domestic partner;
- parent or stepparent of the permit holder or of the permit holder's spouse or registered domestic partner;
- grandparent or step-grandparent of the permit holder or of the permit holder's spouse or registered domestic partner, or a parent or stepparent of such a grandparent or step-grandparent;
- grandchild or great-grandchild of the permit holder or of the permit holder's spouse or registered domestic partner, and issue of such a grandchild or great-grandchild;
- first cousin of the permit holder or of the permit holder's spouse or registered domestic partner, or issue of such a first cousin;
- uncle or aunt of the permit holder or of the permit holder's spouse or registered domestic partner;

- nephew, niece, grandnephew, or grandniece of the permit holder or of the permit holder's spouse or registered domestic partner; or
- spouse or registered domestic partner of any of the individuals listed above.

The human remains of no more than a total of 10 individuals may be buried or permanently disposed of in a family cemetery. A permit holder must provide written notice to the appropriate local health official of the permit holder's intent to cause the burial or permanent disposition of the human remains in the family cemetery. The burial or permanent disposition of human remains in a family cemetery must be performed by a person with appropriate professional expertise, as determined by the Board.

Before the human remains of an individual are buried or permanently disposed of in a family cemetery, the permit holder must submit a map to the board showing the exact location within the family cemetery where the human remains will be buried or permanently disposed of, in a format required by the board, and the permit holder must pay a fee to the Board (which may not be more than \$25).

The Board is granted rule-making authority in the following areas:

- the format and style of maps or plats that must be submitted to the Board;
- record retention by permit holders;
- reasonable limitations and prohibitions on the siting of a family cemetery related to public health and safety concerns, such as but not limited to the property's proximity to a groundwater source or a flood zone, or the location of the family cemetery on the property relative to neighboring properties;
- procedures a permit holder must follow regarding the burial or permanent disposition of human remains; and
- establishing the people who have the appropriate level of professional expertise who may perform, in consultation with the permit holder, the burial or permanent disposition of human remains at a family cemetery.

The Board must maintain records of the applications, documents, and maps submitted to or obtained by the Board. The Board and the Department of Licensing (DOL) may agree that the DOL will set the amount of and accept fees from permit holders due to the Board. Moneys received must be transmitted to the state Treasurer for deposit into the General Fund. The Board may refer violations of the act to the Attorney General or the proper prosecuting attorney to restrain or prevent the doing of any act or practice prohibited.

Cities, towns, counties, and subdivisions of the state may not prohibit the use of property within their jurisdiction as a family cemetery if a family cemetery is in compliance with the act, and may not require any fee, permit, license, or authorization in order for a person to use property within its jurisdiction as a family cemetery.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.