

Legislative Analysis



ABANDONED CEMETERY SPACES

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House Bill 4890

Sponsor: Rep. Edward McBroom

Committee: Regulatory Reform

Complete to 5-19-14

A SUMMARY OF HOUSE BILL 4890 AS INTRODUCED 6-20-13

The bill would amend the Cemetery Regulation Act by adding Section 17, which would create guidelines that apply to several scenarios in which a cemetery owner or operator believes the right to a space within a cemetery has been abandoned.

If all of the criteria in a given scenario are met, then the cemetery owner or operator may move to have the space certified as abandoned. Currently, the act does not address these situations. A more detailed summary follows.

House Bill 4890 would define the "right to a space" as a "burial right, columbarium right, or entombment right within a cemetery." Under the bill, a person possessing the right to a space within a cemetery is presumed to have abandoned that right if all of the following apply:

- During the past 50 years, the person possessing the right to a space or the person's authorized representative has not provided the cemetery owner or operator with an updated address for purposes of contacting the person.
- During the past 50 years, the person possessing the right to a space or the person's authorized representative has not contacted the cemetery owner or operator and affirmed possession of the right to a space in any of the following ways:
 - Requesting a burial or notifying the cemetery owner or operator of a burial.
 - Requesting an installation of a memorial or notifying the cemetery owner or operator of an installation of a memorial.
 - Indicating or requesting a transfer of the right to a space to another person.
 - Making a payment to the cemetery owner or operator relating to the right to a space.
 - Affirming in writing the possession of the right to a space.
- A memorial has not been installed at the cemetery under the right to a space.
- Remains have not been interred at the cemetery under the right to a space.

Before an owner or operator could certify a right to a space as abandoned, that owner or operator would have to post on that space a written notice of intent to certify that space as abandoned for 60 consecutive days. If the cemetery owner or operator has an address for the person possessing the right to a space or the person's authorized representative, then the owner or operator also would be required to send a written notice of intent, as prescribed by the cemetery commissioner, to that address. The notice would be required to be sent by certified mail with a return receipt requested.

The cemetery owner or operator also would be required to publish a notice of intent to certify the right to a space as abandoned in a newspaper of general circulation in the county in which the cemetery is located, if the owner or operator either does not have an address for the person possessing the right to a space or that person's authorized representative, or if the person or authorized representative does not contact the cemetery owner or operator and affirm the person's possession rights within 60 days after the notice is mailed, regardless of if the mailed written notice mailed was returned as undeliverable.

If a person possessing a right to a space or the authorized representative was notified by the cemetery owner or operator and that person or representative did not seek to retain possession of the right to a space, then the right to a space would be transferred back to the cemetery owner or operator for an amount as agreed by the parties.

If more than 60 days elapsed between publication of the newspaper notice without the person's authorized representative having contacted the cemetery owner or operator and affirmed the person's possession rights, then the owner or operator could file a certified notice of abandonment with the cemetery commissioner (within the Department of Licensing and Regulatory Affairs) on a form prescribed by the commissioner. The notice would include a description of the right to a space affected and the names of any persons possessing the right to the space known to the cemetery owner or operator. The form shall require that the cemetery owner or operator certify all of the following:

- That the right to a space is presumed to be abandoned under the criteria previously mentioned above.
- That the cemetery owner or operator provided written notice both on the space in question and in the local newspaper.
- That the cemetery owner or operator has not received a response from a person possessing a right to a space or the person's authorized representative to those written notices that affirms the person's possession rights.

Once a certified notice was filed, the right to a space would be certified as abandoned. If a person later asserted a contractual right to a space, one of the following would take place:

- The cemetery owner or operator would reinstate the right to a space if the original contractual right to a space has not been resold or otherwise transferred to another person, or

- If the original contractual right to a space had been resold, the cemetery owner or operator, at the option of the person with the original contractual right to a space, would either provide at no cost a different right to a space of comparable value within the cemetery or pay the person with the original contractual right an amount not exceeding 65% of the price for which the original contractual right was resold or otherwise transferred.

A contract for the sale of a right to a space entered into by a cemetery owner or operator after the effective date of the new section (which would be January 1, 2014) would have to contain a written notice of the presumption of abandonment of a right to a space and could impose a legal duty to keep the cemetery owner or operator informed in writing of a current residence address of the person possessing the right to a space under the contract or of the person's authorized representative.

If the cemetery commissioner determined that a process for satisfying legal requirements for the provision of notice using an internet search had been recognized by the courts of this state and was practicable, then the cemetery commissioner would have to promulgate rules under the Administrative Procedures Act of 1969 for the provision of notice using an internet search and, in addition to the provision of notice by mail, a cemetery owner or operator seeking to certify a right to a space within the cemetery as abandoned also would have to provide notice as provided under those administrative rules.

FISCAL IMPACT:

The bill would not have a significant fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.