

Date of Hearing: June 29, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

SB 1179 (Vidak) – As Amended June 6, 2016

SENATE VOTE: 38-0

SUBJECT: Public cemetery districts: interment rights.

SUMMARY: Clarifies in the principal act for public cemetery districts the scope of rights behind an interment right, and establishes a process to allow an owner of an interment right to transfer that right to successors. Specifically, **this bill:**

- 1) Defines an interment right as a transferable property interest that provides an owner of the right to use or control the use of a plot for the interment of human remains, which includes the following rights:
 - a) The right to determine the number and identity of any person or persons to be interred in the plot within a cemetery in conformance with all applicable regulations adopted by the cemetery district (district); and,
 - b) The right to control the placement, design, wording, and removal of memorial markers in compliance with all applicable regulations adopted by a district.
- 2) Provides that an interment right shall not be construed as conferring title to the property burdened by the transferable property interest.
- 3) Allows an owner of an interment right to designate in writing the person or persons who may be interred in the plot to which the owner holds the interment right.
- 4) Requires an owner of an interment right to designate, at the time of purchase, a successor owner or owners of the interment right in a signed written designation deposited with the district.
- 5) Requires, if the owner of an interment right dies without making a valid and enforceable disposition of the interment right by a specific device in a testamentary device, or by a written designation, the interment right to pass according to the laws of intestate succession. Requires a district, in the event that the owner has no heirs at law, to follow the abandonment procedures established for public cemetery districts.
- 6) Provides that an interment right does not include the right for disinterment of human remains, except with consent of the district and written consent of the surviving spouse, child, parent, or sibling, in that order of priority.
- 7) Specifies that this bill does not prohibit the removal of remains from one plot to another in the same cemetery or the removal of remains by a cemetery district upon the written order of the court, the coroner, or the health department. Requires a district to maintain a copy of the

written order and retain records relating to the removal or final disposition of the remains, as specified.

- 8) Requires a district, upon sale of a burial plot, to notify the purchaser in writing of all the following:
 - a) The interment rights of the purchaser;
 - b) The law that governs the successive ownership of interment rights; and,
 - c) The district's adopted policies, rules, and regulations governing the use, sale, or other transfer of interment rights.
- 9) Allows a surviving spouse, registered domestic partner, child, parent, or heir, who has an interment right, to waive the right in favor of any other relative of the deceased owner or spouse of a relative of the deceased owner.
- 10) Requires a person, who purports to be the successive owner of an interment right, to execute a written affidavit declaring under penalty of perjury all of the following:
 - a) He or she is the person entitled to succeed to the interment right as provided;
 - b) He or she has exerted all reasonable efforts to find other persons, who may have an equal or higher claim to succeed to the interment right; and,
 - c) He or she is unaware, to the best of his or her knowledge, of any opposition challenging his or her right to succeed to the interment right.
- 11) Requires the successive owner of an interment right to comply with applicable state and local laws, and applicable requirements or policies established by a district board of trustees.
- 12) Provides that when a district acts to transfer ownership rights or makes an interment on the basis of a written affidavit described in 10), above, the district, an employee, or trustee shall not be liable for any claims, losses, or damages asserted in any action, unless the district had actual knowledge that the facts stated in the written affidavit were false.

EXISTING LAW:

- 1) Establishes Public Cemetery District Law, which provides formation, powers, and governance for public cemetery districts.
- 2) Authorizes a district to exercise all rights and powers to sue and be sued; to acquire, sell, or lease property; to engage counsel and other professional services; and, to enter into and perform all necessary contracts. Authorizes a district to sell interment rights in its cemeteries, columbariums, and mausoleums, as specified.
- 3) Defines interment right as the right to use or control the use of a plot, niche, or other space, authorized by law, for interment of human remains. (Section 9002.)

- 4) Requires a district board of trustees to adopt a schedule of fees for interments in cemeteries owned by the district and for other necessary and convenient services.
- 5) Limits interment in a district to the following:
 - a) Persons who are residents of the district;
 - b) Persons who are former residents of the district and who acquired interment rights while they were residents of the district;
 - c) Persons who pay property taxes on property located in the district;
 - d) Persons who formerly paid property taxes on property located in a district and who acquired interment rights while they paid those property taxes;
 - e) Eligible nonresidents of the district, as provided in this chapter; and,
 - f) Persons who are family members of any person described above.
- 6) Requires a district to maintain accurate and current records, including records of the location of the sites where persons have acquired interment rights, including the names and addresses of the persons who have acquired these interment rights, and the location of plots where interment rights are available for acquisition.
- 7) Establishes a process for a public cemetery district to seek the abandonment of an interment plot. Requires the board of trustees of a public cemetery district, to seek abandonment, to file a petition with the superior court, as specified.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This bill seeks to clarify the rights of an interment right, and provides the groundwork for passing on an interment right to successors by allowing a purchaser to transfer the right to a named successor on a designation form, or through a testamentary instrument. Under existing law, if the purchaser of a burial right dies and is not buried in the plot, there is no mechanism for the interment right to be passed on to living heirs. This bill provides that mechanism by requiring a purchaser to designate a beneficiary or successor. Additionally, this bill clarifies that an owner of an interment right may transfer his or her interment right in a trust, will, or other testamentary document. Under this bill, if a purchaser fails to name a successor, the interment right passes according to the rules of intestate succession, similar to the transfer of burial rights in private cemeteries. This bill also requires that when a named successor comes forward to claim the interment right, the successor must execute an affidavit to confirm his or her ownership. This bill is sponsored by the California Association of Public Cemeteries.
- 2) **Author's Statement.** According to the author, "Current law presently provides no direction to public cemeteries when it comes to the use of interment rights purchased by someone who has already passed away without designating a successor. Because of this ambiguity with the

passing of interment rights, some public cemeteries have established their own guidelines or policies as to how interment rights are passed down. With guidelines varying from district to district, it can cause confusion and delay for a family that is trying to utilize an interment right purchased by a deceased family member. When a cemetery decides to use an interment right that has not been probated or successor named in legal documents, they usually have about 3 to 7 days to make a decision to accommodate the family's request to inter the deceased. These quick and emotional decisions must be made by public cemeteries to determine who has the authority to use the interment right with very little guidance from the law. SB 1179 requires interment right owners, at the time of purchase, to designate successors. If the owner of an interment right passes before any successors are appointed in either the previous provisions of SB 1179 or a legal device (will, trust, probate), the interment right will transfer to the successors according to the rules of interstate succession, similar to the transfer of burial rights in private cemeteries. Heirs who have an interment right are able to waive that right in favor of any other relative of the deceased owner."

- 3) **Arguments in Support.** Supporters argue that public cemetery districts do not have documented guidance to administer interment rights after the original owner dies, leaving no affidavit or direction for the use of those interment rights, a void that the provisions of this bill will fill.
- 4) **Arguments in Opposition.** None on file.
- 5) **Double Referral.** This bill was heard by the Judiciary Committee on June 8, 2016, where it passed with a 9-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Public Cemeteries [SPONSOR]
 Altaville Cemetery District
 California Special Districts Association
 Fair Oaks Cemetery District
 Kern County Cemetery District
 Lemoore Cemetery District
 Los Banos Cemetery District
 Madera Cemetery District
 Murrieta Valley Cemetery District
 Oroville Cemetery District
 Paso Robles District Cemetery
 Public Cemetery Alliance
 Roseville Public Cemetery District
 San Jacinto Valley Cemetery District
 Sutter Cemetery District
 Williams Cemetery District
 Wilmington Cemetery District

Opposition

None on file