

# Please support SB 1537

## Creates fair, efficient process for the disposition of abandoned burial spaces

**Problem:** Cemeteries throughout Oregon are holding burial spaces purchased decades ago – in many cases, over a century ago – whose owners cannot be found and may never return to use them. Not only does this present a burden to the cemetery owner, but it limits the supply of burial spaces available to the community and may cause cemeteries to seek to expand even though they have many unused gravesites.

There is an existing process for reclaiming a previously sold burial space, codified at ORS 97.870-97.920, but it is available only to certain cemeteries and is outdated, unwieldy, and expensive for both the cemetery owner and the public.

**SB 1537 proposes a process that is better for both the cemetery owner and the public interest in many ways.**

➤ **Rationale and availability:**

- **The current process** is based on the principle of nuisance and is predicated on the notion that the owners of unused burial spaces are responsible for upkeep of the area around the space (mowing, weeding, etc.). While this remains true in many cemeteries, “endowment care” and “perpetual care” cemeteries that provide upkeep have no process for reclaiming or vacating the ownership of abandoned burial spaces.
- **SB 1537** retains the existing process but provides an alternative process available to all cemeteries for declaring a burial space abandoned if the owner cannot reasonably be located and has not been heard from in over 50 years.

➤ **Threshold for initiating process to reclaim burial space:**

- **Current process – lower threshold:** Burial space unused by owner for 40 years or uncared for and unused for 20 years
- **SB 1537 – higher threshold:** Burial space is unused by owner and no record of verbal or written contact with owner for 50 years; this longer period of no contact is more protective of those who have purchased graves

➤ **Notice:**

- **Current process – less notice:** Requires the initiation of a lawsuit via a court summons to owner on record if owner is an Oregon resident; if owner cannot be located or is unknown, notice published in newspaper in the county for four consecutive weeks and posted in the cemetery during foreclosure proceedings
- **SB 1537 – more notice:** Certified mail to owner on record and anyone the cemetery has reason to believe has an ownership interest, regardless of residency; notice published in a local newspaper for four weeks and posted in the cemetery for four weeks

➤ **Process:**

<u>Current process</u>	<u>SB 1537</u>
Cemetery authority must <b>sue the owner of the burial space</b> in circuit court	Cemetery authority must attempt to <b>contact the owner of the burial space</b> by certified mail to last known address, regardless of residency
Cemetery authority must <b>search for owner in the prior year’s tax roll</b> with assistance of the county sheriff, <b>and must serve a summons to Oregon residents only</b> . If the owner is not found in the prior year’s tax rolls, cemetery authority must <b>publish notification</b> in the newspaper for four consecutive weeks	Cemetery authority must <b>post a notice at the cemetery</b> for four consecutive weeks, <b>publish notification</b> in the newspaper for four consecutive weeks and, if possible, <b>provide notice by telephone and email</b>
If the owner fails to appear, the court must then <b>declare the space a common nuisance, create a lien upon the lot and foreclose the lien</b> . Notice of foreclosure is posted at the cemetery	If the owner fails to respond in 90 days, the cemetery authority may <b>declare the space abandoned</b> and regain legal title to the space, returning it to the inventory of available spaces
The cemetery authority must then <b>bid on the burial space at a public auction</b> to regain the right to the space	

➤ **Remedy if owner appears later:**

- **Current process – less protective:** The current process creates the possibility of conflict between any third party who might purchase the burial space at auction and an owner who appears afterward to claim the space; the original owner has a one-year right to buy back the space for the amount paid by the third party.
- **SB 1537 – more protective:** If the owner or a person with a legal interest in the burial space appears within a year after the space is declared abandoned, the cemetery is required to provide a reasonably comparable burial space within 30 days.

**Summary:** The existing process involves costs to the cemetery authority from legal fees and attempts to outbid third parties at auction, and public costs associated with activities of the county sheriff and the required use of the court system – all to address the narrowly applicable notion of nuisance. Even for the subset of cemeteries where it is available, this process is so costly and impractical that it is almost never used. The result is that thousands of unused burial spaces across the state remain unavailable to the community.

SB 1537 proposes a fair and efficient alternative process that applies more universally and offers greater protection to existing owners of interment rights, but also provides a realistic path for reclaiming graves where no owner can be found.