

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1475 Cemeteries/Ingress & Egress
SPONSOR(S): Gardiner
TIED BILLS: none **IDEN./SIM. BILLS:** SB 2040 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration		Bond	Everhart
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law provides that the family of a deceased person has an easement for maintenance of and visiting the gravesite of their deceased relative. This bill provides that the members of any not-for-profit organization whose purposes include the preservation of Florida's history may utilize that same easement if the descendants, relatives, and landowner do not maintain the cemetery, provided that the organization notifies the Division of Historical Resources of the Department of State of the organization's intent to utilize this easement right.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill minimally expands the duties of the Division of Historical Resources.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 704.08, F.S., provides that the relatives of any person buried in a cemetery have an easement for ingress and egress for the purpose of visiting the cemetery at reasonable times and in a reasonable manner. The owner of the land may designate the easement. If the cemetery is abandoned or otherwise not being maintained, such relatives may request the owner to provide for reasonable maintenance of the cemetery, and, if the owner refuses or fails to maintain the cemetery, the relatives and descendants have the right to maintain the cemetery.

A person who buys property upon which a graveyard sits may not disturb the graves, and is presumed to know that graves are on the property and that the friends and family of the deceased may, and likely will, visit the graveyard. The statutory easement is based on common law rights to visit graveyards, together with a common law easement for such persons to access the graveyard from the nearest public road.¹ Title insurance companies recognize these common law and statutory rights.²

Section 872.02, F.S., provides that it is unlawful for any person to willfully and knowingly disturb a gravesite or grave marker.

Effect of Bill

This bill amends s. 704.08, F.S., to provide that, in the absence of any relatives of the persons buried in a cemetery, or if a cemetery is abandoned or otherwise not being maintained, the members of a non-profit organization whose purposes include the preservation of Florida's history may utilize the easement to gain access to the cemetery for the purpose of maintaining it. Before the members of such an organization may utilize the easement, the organization must file a letter with the Division of Historical Resources of the Department of State of the organization's intention to such easements.

C. SECTION DIRECTORY:

Section 1 amends s. 704.08, F.S., to provide additional persons that may use the easement for access to cemeteries.

Section 2 provides an effective date of upon becoming law.

¹ *Mingledorff v. Crum*, 388 So.2d 632, 635-36 (Fla. 1st DCA 1980), quoting from *Hines v. State*, 126 Tenn. 1, 149 S.W. 1058, 42 L.R.A. (N.S.) 1138.

² TN 25.03.11A. (Attorney's Title Insurance Fund, Inc.; December 2000).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The potential expenses are so minimal as to be negligible. The Division of Historical Resources will be required to accept letters, maintain such letters on file, and make them available upon a public records request.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a local government revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate a local government expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

It is possible that this bill may perhaps be an expansion of the statutory easement, and thus a form of a government taking, however slight. However, the law already allows for an easement to the family of persons buried in a gravesite for maintenance of such gravesite. It is arguable that, as gravesites cannot be disturbed, moved, or built upon, and an easement to such gravesites is currently in law, land upon which a graveyard sits is likely to have no monetary value. Where property has no value, the owner of such property would presumably have no measure of damages for any taking of such property.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

n/a