

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1475 w/CS Cemeteries/Ingress & Egress
SPONSOR(S): Gardiner
TIED BILLS: **IDEN./SIM. BILLS:** SB 2040 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N w/CS</u>	<u>Bond</u>	<u>Everhart</u>
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 amends the easement to: provide that it is only available during daylight hours, require that persons who use the easement must notify the landowner, and provide that the landowner is not liable for injury to persons who use the easement. This bill also provides that the members of any not-for-profit organization whose purposes include the preservation of Florida's history may also utilize that same easement, 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 Department of State, and creates a new requirement to provide notice to landowners.

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 the easement rights at s. 704.08, F.S., applicable to all persons, to provide that:

- The easement may only be utilized during daylight hours, specifically, from one-half hour after sunrise to one-half hour after sunset.
- An individual must notify the landowner at least 7 days in advance, by certified mail, of his or her intent to utilize the easement.
- The owner of the land on which a cemetery is located is not liable for personal injury to persons who utilize the easement.

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).

This bill also provides that the easement may be utilized by the members of a non-profit organization whose purposes include the preservation of Florida's history. Use of the easement by the members of a non-profit organization may only be once per calendar quarter, unless emergency repairs are required. Before the members of such an organization may utilize the easement, the organization must file a letter with the Department of State describing the organization's proposed activity.

C. SECTION DIRECTORY:

Section 1 amends s. 704.08, F.S., to provide additional persons that may use the easement for access to cemeteries, to restrict the use of the easement, and to provide a limitation on liability.

Section 2 provides an effective date of upon becoming law.

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:

The requirement to give notice by certified mail may be cumbersome as applied to relatives of a decedent who may often visit a cemetery.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 22, 2004, the Committee on State Administration adopted one amendment substantially re-writing the bill. The committee added the daylight limitation, added the written prior notice requirement, and added the limitation on liability. The bill was then reported favorably with a committee substitute.